A DIGEST

OF

THE HIGH COURT REPORTS,

1862—1900,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1836—1900.

S

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See Cases under Attachment—Subjects of Attachment—Salary.

——— **Assignment of**—*5 & 6 Edw. III, c. 16—49 Geo. III, c. 126—Public policy—Assignment by Judge of Supreme Court of sum payable after his death under 6 Geo. IV, c. 85.*—An assignment by a Puisne Judge of the Supreme Court at Madras of the sum, "equal to the amount of six months' salary," directed by the 6 Geo. IV, c. 85, to be paid to the "legal personal representatives" of such Judge in case of his death in and after six months' possession of office, *held* to be a valid assignment, being a vested contingent interest in such Judge, and, not being payable during the life of the Judge, was not an assignment of salary within 5 & 6 Edw. III, c. 16, and 49 Geo. III, c. 126, and therefore was not contrary to public policy. Arbuthnot *v.* Norton

[3 Moore's I. A., 435

——— **Receipt of**—

See Insolvency—Insolvent Debtors under Civil Procedure Code.

[6 B. L. R., 576
13 B. L. R., 268

——— **Suit for recovery of**—

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[4 B. L. R., Ap., 68
8 Mad., 87
6 W. R., 33

SALE.

See Certificate of Sale.

——— **Conditional**—

See Vendor and Purchaser—Conditional Sales.

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——— **Conditions of**—

See Practice—Civil Cases—Sale by Registrar . I. L. R., 21 Calc., 566

——— **Confirmation of**—

See Cases under Limitation Act, 1877, art. 179 (1859, s. 20)—Step in aid of Execution—Confirmation of Sale.

——— **Irregularity in**—

See Cases under Sale for Arrears of Rent—Setting aside Sale—Irregularity.

See Cases under Sale for Arrears of Revenue—Setting aside Sale—Irregularity.

See Cases under Sale in Execution of Decree—Setting aside Sale—Irregularity.

See Trespass—General Cases.

[3 B. L. R., P. C., 10
I. L. R., 19 Calc., 207

——— **Power of**—

See Executor . I. L. R., 1 All., 710
[I. L. R., 23 Calc., 560
I. L. R., 23 Bom., 342

See Cases under Mortgage—Power of Sale.

——— **Stay of**—

See Injunction—Under Civil Procedure Codes.

[5 B. L. R., 254, 254 note
22 W. R., 509
11 B. L. R., Ap., 28
24 W. R., 70
I. L. R., 7 All., 550
I. L. R., 11 Calc., 145
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I. L. R., 10 All., 60

SALE—*concluded.*

———— Suit to set aside—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

See CASES UNDER RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE.

SALE BY AUCTION.

———— Agreement not to bid against one another at—

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 18 Bom., 312

———— Auctioneer—*Agent bidding "kutcha-pucca"—Usage of trade—Custom—Condition of sale.*—An agent of the defendants made at an auction-sale a bid for certain goods this bid was not at the time accepted by the auctioneers, but was referred to the owners of the goods for approval and sanction, the agent agreeing to such reference. The conditions of sale contained no clause stipulating for such procedure. Previous to any reply being received by the auctioneers from their principals, the principals of the agent bidding refused to acknowledge the bid of their agent. In a suit brought by the auctioneers to recover a loss on a re-sale of the goods, the plaintiffs set up a usage of trade, whereby it was alleged that the bidder at such a sale was not at liberty to withdraw his bid until a reasonable time had been allowed for the auctioneers to refer the bid to the owner of the goods. The only evidence on this point was that of an assistant to the firm of the plaintiffs, who stated "that such an arrangement had never been repudiated." *Held* that the condition of sale containing no clause to the effect of the usage [illegible]
& Co. . . . I. L. R., 16 Calc., 702

SALE FOR ARREARS OF RENT.

SALE FOR ARREARS OF RENT —*continued.*

See COURT OF WARDS . 15 B. L. R., 343

See HINDU LAW — WIDOW — DECREES AGAINST WIDOW AS REPRESENTING ESTATE OR PERSONALTY.
[10 B. L. R., 294
15 B. L. R., 142, 143 note
I. L. R., 16 Calc., 511

See INSOLVENCY—SALE FOR ARREARS OF RENT . . I. L. R., 1 Mad., 60
[I. L. R., 9 Calc., 855

See CASES UNDER MADRAS RENT RECOVERY ACT.

See RES JUDICATA—ADJUDICATIONS.
[13 B. L. R., 140

See TRESPASS—GENERAL CASES.
[2 B. L. R., P. C., 10
12 Moore's I. A., 244
I. L. R., 19 Calc., 267

———— Effect of setting aside—

See BENGAL RENT ACT, 1869, s. 29.
[12 Moore's I. A., 244
2 B. L. R., P. C., 10

———— Money paid to protect property from—

See VOLUNTARY PAYMENT.
[I. L. R., 23 Calc., 23
I. L. R., 25 Calc., 305
I. L. R., 20 Calc., 826
1 C. W. N., 458

———— Payment to set aside—

See CO-SHARERS — GENERAL RIGHTS IN JOINT PROPERTY.
[I. L. R., 22 Calc., 800

———— Suit to set aside—

See CO-SHARERS — SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION . 12 B. L. R., 370

1. ACT VIII OF 1835.

1. ———— Procedure—*Sale of under-tenure—Beng. Reg. VII of 1799*—Sales of under-tenures under Act VIII of 1835 for arrears of rent were not

SALE FOR ARREARS OF RENT —*continued.*

1. ACT VIII OF 1835—*continued.*

required to be according to the procedure laid down in Regulation VII of 1799, but according to the procedure prescribed by s. 2 of Act VIII of 1835. MONOSHEE *v.* ABDOOL HOSSEIN . 7 W. R., 297

2. ———— Effect of sale—*Right of purchaser—Itmamee tenure.*—When rights and interests in a talukh were sold for arrears of rent under Act VIII of 1835, the purchaser obtained no power to destroy the itmamee tenure. SOODULCHUNDER PAUL *v.* ATTUR ALI . . . . 11 W. R., 32

3. ———— *Right of purchaser—Incumbrances.*—A sale of an under tenure under Act VIII of 1835 passed only the right, title, and interest of the judgment-debtor, and did not void the incumbrances created by the old tenant. MANICK CHUNDER DOSS *v.* DWARKANAUTH DOSS [2 Hay, 602

4. ———— *Right of purchaser—Act XI of 1859, s. 52—Semble.*—The purchaser of a holding in a khas mehal sold under Act VIII of 1835 could claim the position or privileges accorded by ss. 37 and 52 of Act XI of 1859 to purchasers of permanently settled estates, or of estates sold in districts not permanently settled, sold for arrears of revenue. KYLASH CHUNDER SHAHA *v.* SHURNOMOYEE DOSSEE . 7 W. R., 318

5. ———— *Incumbrances—Howladari tenure.*—The plaintiff held certain lands in talukh Q under a howladari pottah. Q was sold for arrears of rent under Act VIII of 1835, and purchased by the defendants. [illegible] chaser of a tenure under Act VIII of 1835 did not necessarily acquire it free from all incumbrances. Case remanded for trial of the genuineness of the plaintiff's pottah. JASIMUDDIN *v.* MANSUR ALI [6 B. L. R., Ap., 149: 15 W. R., 11

Contra, DWARKANATH DOSS *v.* MANICK CHUNDER DOSS . . . . . . 3 W. R., 197

RAMJEEBUN CHOWDRY *v.* PEARY LALL MUNDUL [4 W. R., Act X, 30

6. ———— *Right of purchaser—Attachment—Tender of arrears.*—In a suit to set aside a sale in execution of a decree for arrears of rent due up to Aghran 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. He was not a registered tenant at the time of the sale, but as a sezawal was legally in possession. The plaintiff never tendered the arrears for which the sale was made. Under Act VIII of 1835, no separate attachment of a mehal or notification of sale in the mofussil is necessary in order to render the sale valid. In this case, not the rights and interests of the defaulter, but the tenure itself, passed for the arrears due upon it. Attachment by the appointment of a sezawal is no bar to a sale for arrears due before such attachment. FORBES *v.* PROTAP SINGH DOOGUR [7 W. R., 409

7. ———— *Beng. Reg. VII of 1799—Tuppa right, Extinguishment of.—Semble*—A tuppa right is annihilated by a sale held under Act VIII of 1835 and cl. 7, s. 15, Regulation VII of 1799. ZEENUT BEBEE *v.* RAHATOONISSA [7 W. R., 243

2. DEFAULTERS

8. ———— Disabilities of defaulters—*Purchase—Beng. Reg. VIII of 1819—Sale of patni.*—A defaulter cannot, under Reg. VIII of 1819, purchase a patni sold on account of his default to pay the patni rent, either in his own name or in that of any other person. MAHOMED NASSEER *v.* KISHEN MOHUN GOYEE W. R., F. B., 93

9. ———— *Purchase—Sale of patni.*—Not merely recorded shareholders, but all actual defaulters (such as joint patnidars), are prohibited from being purchasers of patni. GOUREE KOMUL BHUTTACHARJEE *v.* RAJ KISHEN NATH [5 W. R., 106

SALE FOR ARREARS OF RENT —*continued.*

2. DEFAULTERS—*concluded.*

suit should be dismissed. RAM LOLL MOOKERJEE *v.* DEBENDER NATH CHATTERJEE [I. L. R., 8 Calc., 8

S. C. RAM LALL MOOKERJEE *v.* JODUNATH CHATTERJEE . . . . . 9 C. L. R., 337

12. —— —— Defaulter for period later than that causing the sale—*Suit for damages by dar-patnidar.*—When a patni is sold for default [illegible]

[illegible] ABER BIBEE . . . . . 5 W. R., 201

3. UNDER-TENURES, SALE OF.

13. ——— Beng. Act VIII of 1865—*Application of Act—Chota Nagpore.*—Bengal Act VIII of 1865 applied to the district of Lohardagga in Chota Nagpore. GOBIND RAM *v.* BHUPAL SINGH [10 C. L. R., 76

14. ——————— s. 30—"*Proceeding*"—*Sale.*—A sale under Bengal Act VIII of 1865 was a "proceeding" within the meaning of s. 30 of that Act. DWARKANATH SEIN *v.* CHUNDER MOHUN MITTER . . 12 W. R., 320

15. ——— Act X of 1859, s. 105—*Sale of transferable tenure—Act X of 1859, s. 131.* [illegible]

Act X of 1859, and was not admissible by reason of the repeal of the Act; in so far as, irrespectively of [illegible]

16. ——————— *Purchase by zamindar at sale in execution of decree of Civil Court.*—A zamindar who had obtained a decree against a registered tenant for arrears of rent was fully justified in proceeding to sale under s. 105 of Act X of [illegible]

17. ——————— Under s. 105, Act X of 1859, an under-tenure might be sold in execution of a decree, provided there was an arrear of rent adjudged. SUTTEESCHUNDER ROY *v.* MODHOOSOODUN PAUL CHOWDHRY . W. R., 1864, Act X, 91

18. ——————— *Procedure by proprietor of under-tenure—Act X of 1859, s. 106.*—Under s. 105, Act X of 1859, an under-tenure was liable to sale in execution of a decree for arrears of [illegible]

19. —— —— Beng. Act VIII of 1869, ss. 59, 64—*Procedure.*—Where an under-tenure is sold under the provisions of Bengal Act VIII of 1869 in execution of a decree obtained by the zamindar for rent due to him as the separate proprietor, after butwara of a share of the talukh in which the tenure is situated, the sale is properly conducted, not under s. 64, but under s. 59 of the above law. SURUT SOONDUREE DEBIA *v.* SUMEERODDEEN TALUKHDAR [23 W. R., 530

20. —— —— Effect of sale—*Right, title, and interest of debtor—Act X of 1859, s. 105.*—In a sale under s. 105, Act X of 1859, only the judgment-debtor's property can pass. MEAH JAN MUNSHI *v.* KURRUNA MAYI DEBI . . . . . 8 B. L. R., 1

21. ——————— "*Tenure,*" *Meaning of—Non-registration of names—Act X of 1859, s. 105.*—By the word "tenure" as used in s. 105, Act X of 1859, is meant not the right or interest of [illegible]

a transferable under-tenure, and previous to the confirmation of such sale the zamindar sued the tenant for arrears of rent and obtained a decree, under which he sold the tenure to persons who conveyed it to *B.* and *A.*, under the circumstances, neither registered the transfer to him nor made any deposit of rent as allowed by s. 6, Bengal Act VIII of 1865,—*Held* that he was not entitled to recover possession from *B.* SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY [12 B. L. R., F. B., 484 : 21 W. R., 94

GIRISH CHUNDER MITTER *v.* JHAKU [12 B. L. R., 488 note : 17 W. R., 352

ANUND LOLL MOOKERJEE *v.* KALIKA PERSAD MISSER . 12 B. L. R., 489 note : 20 W. R., 59

RUGHOOBUR THAKOOR *v.* SEEFOOLLAH KHAN [23 W. R., 289

BANEE MADHUB BUKSHEE *v.* RADHA MADHUB MOZOOMDAR . . . 22 W. R., 106

22. ——————— *Non-registration of tenants' names—Right of person in permissive possession of tenure.*—A sale in execution of a decree for arrears of rent (at an enhanced rate) of a subordinate talukh, which has been obtained against a party who is in possession [illegible]

SALE FOR ARREARS OF RENT —*continued.*

3. UNDER-TENURES, SALE OF—*continued.*

Chowdhry, 12 B. L. R., 484, distinguished. REDOY KISSEN DUTT *v.* RAM COOMAR SEN [3 C. L. R., 231

23. ———————— *Non-registration of purchase of under-tenure in the landlord's serishta.*—In a case governed by Act X of 1859, it was *held* that a person, who had purchased a transferable jote, but who did not get his name registered in the landlord's serishta, had no *locus standi* against a subsequent auction-purchaser of the jote in execution of a decree obtained against the recorded [illegible]

24. ———————— *What passes at sale of under-tenure—Growing crops—Beng. Act VII of 1869, s. 66* —At a sale of an under-tenure for arrears of rent under s. 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved AYATOOLLA SIRDAR *v.* DWARKA NATH MOITRY [I. L. R., 4 Calc., 814 : 4 C. L. R., 95

25. ———————— *What passes at sale of under-tenure—Certificate of sale.*—*B B* held 1 anna of a 10 annas in a jumma which had been purchased by *B L H*, and had paid rent to the kutkinadar on such 1 anna share, and had his name registered as owner of such 1 anna share in the sherista of the kutkinadar. The kutkinadar having afterwards brought a suit against *B L H* alone for arrears of rent of the entire 10 annas, and having obtained a decree and in execution of this decree put up to sale the entire 10 annas share,—*Held* that, as the sale certificate related only to the share of *B L H*, *B B*'s 1 anna share did not pass under such sale. BHUGGERUTH BEHAH *v.* MONEERAM BANERJEE . . I. L. R., 4 Calc., 855

26. ———————— *What passes at sale of under-tenure—Beng. Act VIII of 1869, ss 59, 60—Sale certificate—Proclamation of sale—Held* [illegible] ment. DWARKA NATH *v.* ALOKA CHUNDER SEAL [I. L. R., 9 Calc., 641

27. ———————— *Sale in execution of decree under Civil Procedure Code, 1859—Beng. Act VIII of 1869, ss. 59, 60, 66—Right of purchaser.*—In execution-proceedings under Act VIII of 1869, whether the property attached is an under-tenure or an ordinary leasehold interest, only the [illegible]

SALE FOR ARREARS OF RENT —*continued.*

3. UNDER-TENURES, SALE OF—*continued.*

[illegible] CHAND SAHOO *v.* LALLA CHABEEL CHAND. DOOLAR CHAND SAHOO *v.* LALLA BISHESHUR DYAL [L. R., 6 I. A., 47 : 3 C. L. R., 561

28. ———————— *Beng. Act VIII of 1869, ss. 59, 60—Right of auction-purchaser.*—Where an under-tenure was sold in execution of a decree which had been passed in the terms of a compromise effected between the landlord and all the [illegible] purchaser with any incumbrances. GRISH CHUNDER GHOSE *v.* KALEE TARA . . 25 W. R., 305

29. ———————— *Right of mortgagee—Right to notice of sale—Adjudication of title, Suit for.*—The right, title, and interest of *A* in a certain under-tenure was sold in execution of a decree for rent obtained against him by *B* and purchased by *B* himself. *B* at the time held another decree against *A* for arrears of rent for the same under-tenure. *C*, to whom *A* had previously mortgaged the under tenure, thereupon having foreclosed the mortgage, instituted a suit for possession against *A* and *B* and obtained a decree for possession. After this decree, but before *C* got actual possession, *B* caused the under-tenure to be sold in execution of his other decree against *A* and again became himself the purchaser. *C*, having shortly afterwards obtained possession under his decree, was dispossessed by *B*, who took possession through the Court under his second purchase. *C* thereupon instituted proceedings under s. 209, Act VIII of 1869, in which he was successful, and consequently regained possession. In a suit brought by *B* to set aside those proceedings and for adjudication of title,—*Held* that *B* had a good title to the under-tenure, and that he was not bound, before bringing the under-tenure to sale under his second decree, to give notice to C. *Nobeen Kishen Mookerjee v. Shib Prosad Pattuck, 8 W. R., 96*, considered. LAIDLEY *v.* GUNNESS CHUNDER SAHOO [I. L. R., 4 Calc., 438

S. C. WATSON *v.* GONESH CHUNDER SAHOO [3 C. L. R., 240

30. ———— Procedure—*Setting aside sale—Material irregularities—Civil Procedure Code (Act X of 1877), Ch. XIX, ss. 311, 667.*—The procedure to be followed upon the sale of an under-tenure is now that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under Ch. XIX of the Code, and the sale of an under tenure may be set aside upon any of the grounds mentioned

SALE FOR ARREARS OF RENT —*continued.*

3. UNDER-TENURES, SALE OF—*concluded.*

in that section. Azizconnessa Khatoon *v.* Gora Chand Dass . . . I. L. R., 7 Calc., 163

S. C. Azizconnessa Khatoon *v.* Kally Churn Sen . . . . . 8 C. L. R., 408

4. PORTION OF UNDER-TENURE, SALE OF.

31. ———— Judgment-debtor in receipt of whole rent—*Beng. Act VIII of 1869, ss. 61, 64.*—It is only where the judgment-debtor is in receipt of the entire 16 annas share of the rent that in execution of a decree for rent the under-tenure can be sold. Dwarka Nath Chakravati *v.* Surbiesa Nath Chowdhuri . . . 8 C. L. R., 407

33 ———— Sale under decree obtained by sharer in undivided estate.—If a decree is given in favour of a sharer in a joint undivided estate for his share of the rent of an under-tenure situate in such estate, he is not allowed by law to put up for sale a portion of the under-tenure. Gobind Chunder Roy Chowdhry *v.* Ram Chunder Chowdhry [23 W. R., 421

33. ———————— *Act X of 1859, s. 108—Effect of sale.*—Where a sharer in an undivided talukh, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the rights of the judgment-debtor are sold. Nund Lall Roy *v.* Gooroo Churn Bose [15 W. R., 6

Pitambaree Chowdharain *v.* Nobin Kristo Mookerjee . . . . 18 W. R., 205

34. ——— Act X of 1859, s. 108—*Beng. Act VIII of 1865, s. 4—Sale of under-tenure—Execution of decree for rent.*—A suit by a sharer in a joint undivided estate for money due to him on

[illegible]

giving a pottah and taking a kabuliat, a suit for the

[illegible]

[15 W. R., 524

35. ———————— *Right of purchaser on sale of portion of tenure.*—Where a suit was for rent, and the balances due under the decree were on account of a 7 annas rukkum of a tenure, and the sale-certificate passed the right and interest of the defaulting under-tenant, it was held that Act X of 1859, s. 108, was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser. Aukhil Chunder Mookerjee *v.* Chunder Coomar Mitter . . . . . 23 W. R., 414

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

36. ——— Beng. Act VIII of 1869, s. 64 —*Right of purchaser—Effect of sale.*—The Full Bench decision in *Mon Chand Kuala v. Brojonath Pal Chowdhry, 12 B. L. R. 484; 21 W. R. 94*, by which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a sale under Bengal Act VIII of 1869, s. 64, which provides for the sale, not of the tenure, but of the right, title, and interest of the judgment-debtors. Luchmun Ramonoop Dose *v.* Ram Hurry Roy . . . 22 W. R., 67

37. ——————— *Landlord and tenant—Sale of a portion of a tenure—Beng. Act VIII of 1869, ss. 59, 60—Co-sharers—Parties.*—A portion of a tenure cannot be the subject of a sale under s. 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under ss. 59 and 60. A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust *A*. In a suit by *A* to recover possession of his half share of the tenure on the footing of his purchase, *Held* that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under ss. 59 and 60 of Bengal Act VIII of 1869; and that, as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers, who were not parties to the suit, *A* was not entitled to the relief he sought. Reily *v.* Hur Chunder Ghose [I. L. R., 9 Calc., 723: 13 C. L. R., 308

See Shamchand Kundu *v.* Brojonath Pal Chowdhry. . . . . 12 B. L. R., 484

38. —————— *Right, title, and interest of registered shareholder in tenure—Effect* [illegible]

[illegible]

when it appeared that the zamindar, being only entitled to a share in the zamindari, had obtained a decree against the judgment debtor alone for arrears of rent, and in execution thereof proceeded to sell his right,

[illegible]

tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor. *Doolar Chand Sahoo v. Lalla*

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

Chabeel Chand, L. R., 6 I. A., 47, and *Bisseswur Lall Sahoo v. Luchmessur Singh, L. R., 6 I. A., 233,* commented on. JEO LALL SINGH v. GUNGA PERSHAD . . . I. L. R., 10 Calc., 996

39. ——————— *Sale of right, title, and interest of a registered tenant—Effect of sale of a tenure in execution of a decree for arrears of rent obtained by a co-sharer landlord against the registered tenant alone.* [illegible]

40. ——————— *Sale of a jumma in execution of a decree for rent obtained against one of the heirs, of the last recorded tenant, from whom the landlord chose to accept rent separately and who was not recorded in the landlord's sereshta—Effect of such a sale.*—An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant. The plaintiffs sued to recover possession of their share of certain rent-paying lands on the allegation that they were entitled to a one-third share of these lands by inheritance from the last recorded tenant, and another one-third share by purchase from one of his heirs; that the defendants Nos. 2 and 3 were entitled to the remaining one-third share; that for some years they and the said defendants [illegible] also as he chose to accept rent from the plaintiffs and the defendants Nos. 2 and 3 separately, he had no right to ignore the plaintiffs and proceed only against the defendants. The entire jumma did not pass by the sale, and the plaintiffs' right was not affected thereby. [illegible]

41. ——————— *Sale of gantidari rights.*—In a suit for arrears of rent, where defendants denied the relation of landlord and tenant to exist between themselves and the plaintiffs, it was found that plaintiff had been the sole owner of an estate which formed a 12 annas share of the under-tenure of a gantidar, who was liable to pay the rent of the other 4 annas to the owner of the neighbouring estate. In execution of a decree for arrears of rent due on the 12 annas share, plaintiff caused the ganti to be sold and purchased it himself, and the proceeds not being sufficient to pay the amount of the decree, he caused the tenant-right of the 4 annas share to be sold and purchased that also. *Held* that Bengal Act VIII of 1869, s. 64, did not apply, because plaintiff was not a sharer in a joint undivided estate; and that, by his purchase, plaintiff had become the absolute owner of the 12 annas ganti, and had acquired the right, title, and interest of the last registered tenant in the 4 annas share. The result was to place him in the position of holding the 16 annas gantidari right as against the under-tenants, who were bound to pay rent to him as *de facto* gantidar. JOGENDRO CHUNDER GHOSE v. SUGNA KALEE [24 W. R., 313

42. ——————— *Sale of immoveable property—Beng. Act VIII of 1869, s. 64.*—Where one co-sharer obtains a decree for money due to him on account of his share of the rent of an ijara, and in execution of that decree attaches, in the first instance, the immoveable property of his debtor, such attachment is void and will not invalidate a conveyance of the property by the judgment-debtor made during its continuance. It is not unless and until all the moveable property of the judgment-debtor has been sold and the sale-proceeds are found

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

insufficient to satisfy the decree, that the judgment-creditor can proceed under s. 64 or 65, Bengal Act VIII of 1869, to seize and sell the immoveable property of his debtor. SARODA PROSAD GANGOOLY *v.* TARUCK CHUNDER BHUTTACHARJEE [2 C. L. R., 325

43. ——— *Landlord and tenant—Sale of portion of under-tenure—Suit for*

was the owner of a share in a zamindari, had obtained a decree against *X*, who held a talukh in such zamindari, for arrears of rent due in respect of such share,

tiff had brought a share of an under-tenure to sale in execution of a decree for arrears of rent under s 64 of Bengal Act VIII of 1869, and had thereby acquired nothing by such purchase, there being

44. ——— Act VIII of 1869, ss. 26, 59—*Suit for rent—Landlord and tenant—Effect of sale in execution of a decree for rent.*—Where two per-

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*concluded.*

to such rights and interests and not extending to the tenure itself. MAHOMED SIRKAR *v.* GIRISH CHUNDER CHOWDHURI . . . 2 C. W. N., 251

5. EFFECT OF SALE.

45. ——— Dissolution of relation of landlord and tenant—*Patni tenure.*—The sale of a patni dissolves the relationship of landlord and tenant between the zamindar and the patnidar. BROJONATH SINGH ROY *v.* BHUGOBUTTY DASSEE [1 W. R., 133

46. ——— Unregistered tenant.—A za-

Upholding on review decision in . 8 W. R., 96

47. ——— Registered tenant affected by sale.—A zamindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. FORBES *v.* PROTAP SINGH DOOGUR [7 W. R., 409

48.

S. C. RAM COMUL MISTRY *v.* GOPEEKISTO GOSSAMEE . . . . . 1 Hay, 563

See contra, HOROMOHUN MOOKERJEE *v.* RAM COOMAR MITTER . . . 1 W. R., 225

49. ——— Right of inamdars in re-

6. INCUMBRANCES.

50. ———
of sale on—
patni talukh.-
provisions of I
nate tenures, such as ousat talukhs, howlas, nimhowlas, did not necessarily lapse. it depended very much upon the terms of the pottah or grant under

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

which the original talukh was created. DWARKANATH DOSS BISWAS *v.* MANICK CHUNDER DOSS [9 W. R., 200

51. - - Tenures created by defaulter —*Beng. Reg. VIII of 1819—Sale of patni tenure.*—A sale under Regulation VIII of 1819 did not *ipso facto* annul all tenures created by the defaulting patnidar, but the purchaser, if he thought proper, could avoid them. MADHUSUDUN KUNDU *v.* RAMDHAN GANGULI [3 B. L. R., A. C., 431: 12 W. R., 383

52. ——— Tenures created by patnidar—*Patni tenure—Act X of 1859, s. 105 —Beng. Reg. VIII of 1819*—The provisions of [illegible]

effected of a "patni talukh" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that in case of an arrear occurring, the estate might be [illegible]

v. BRINDABUN CHUNDER DEY CHOWDHRY [13 B. L. R., 408: 21 W. R., 324 L. R., 1 I. A., 178

S. C. in High Court, BRINDABUN CHUNDER CHOWDHRY *v.* BRINDABUN CHUNDER SIRCAR CHOWDHRY [8 W. R., 507

53. Decree as to liability to [illegible]

decree. TARAPRASAD MITTRA *v.* RAM NRISING MITTRA . 6 B. L. R., Ap., 5: 14 W. R., 283

54. ——— Purchase by grantor of patni tenure—*Beng. Reg. VIII of 1819, s. 11, cls. 1 and 3—Rate of rent—Patni tenure*—The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the rents realized by the patni-holder in the interim. MAJORAM OJHA *v.* NILMONEY SINGH DEO [13 B. L. R., 108: 21 W. R., 326

55. — Right to annul tenures—*Right of lessee claiming under purchaser—Tenures not annulled by purchaser*—Where an auction purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor,—*Held* that it was not open to any person subsequently holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. TARA CHAND DUTT *v.* WAKEENOONISSA BIBEE . . . . . 7 W. R., 91

56. ——— Power to make incumbrances—*Patni lease, Construction of—Beng. Reg. VIII of 1819.*—A patni lease containing words to the effect that the patnidar could give no dar-patni or mokurari lease at a jumma less than the jumma of the patni was held to confer no such power as that [illegible]

acquires any of the rights of the patnidar, he is bound by the acts of the latter as regards the grant of leases. MOHADEB MUNDUL *v.* COWELL . 15 W. R., 445

Upheld on review. COWELL *v.* MOHADEB MUNDUL [17 W. R., 182

See MONOMOTHONATH DEY *v.* GLASCOTT [20 W. R., 275

SHAM CHAND MITTER *v.* JUGGUT CHUNDER SIRCAR [22 W. R., 50

Upheld on review . . 22 W. R., 541

57. ——— Right of ejectment—*Right of purchaser of patni tenure—Waiver by acceptance of rent.*—The receipt of rent for fifteen years by the purchaser of a patni talukh sold for arrears of rent under Regulation VIII of 1819 was held to be a waiver on his part of his right to evict the tenant under cl. 2, s. 11 of that Regulation. WOOMANATH ROY CHOWDHRY *v.* ROGHOONATH MITTER [5 W. R., Act X, 63

58. ——— Bengal Rent Act, 1869, s. 66 (Beng. Act VIII of 1865, s. 16)—*Khodkasht raiyats*—The object of s. 16, Bengal Act VIII of 1865, was to protect, not merely any one class of tenants, but the leaseholder of the particular land leased: the expression "khodkasht raiyats" as used there meaning "resident and hereditary cultivators." KOONJEE DEBEE *v.* HIRDOY NATH DUBEEPA [16 W. R., 206

59. ——— *Purchase of rights of holder of fractional share*—S. 16 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure. HARASUNDARI DASI *v.* KISTOMANI CHOWDHRAIN [5 B. L. R., Ap., 37: 13 W. R., 257

60. ——— *Right of purchaser to eject tenants.*—Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure itself did

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

insufficient to satisfy the decree, that the judgment-creditor can proceed under s. 64 or 65, Bengal Act VIII of 1869, to seize and sell the immoveable property of his debtor. SARODA PROSAD GANGOOLY *v.* TARUCK CHUNDER BHUTTACHARJEE [2 C. L. R., 325

43. ——— *Landlord and tenant—Sale of portion of under-tenure—Suit for arrears of rent.*—There is nothing in s. 64, Bengal Act VIII of 1869, which necessarily leads to the

was the owner of a share in a zamindari, had obtained a decree against *X*, who held a talukh in such zamin-
re,
of
in
er;
d a
suit against *X*, who was also the owner of a howla and nim-howla under the said talukh, for arrears of rent due in respect of the share of the talukh so

ASHANULLA KHAN BAHADUR *v.* RAJENDRA CHANDRA RAI . . . I. L. R., 12 Calc., 464

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*concluded.*

to such rights and interests and not extending to the tenure itself. MAHOMED SIRKAR *v.* GIRISH CHUNDER CHOWDHURI . . . 2 C. W. N., 251

5. EFFECT OF SALE.

45. ——— **Dissolution of relation of landlord and tenant**—*Patni tenure.*—The sale of a patni dissolves the relationship of landlord and tenant between the zamindar and the patnidar. BROJONATH SINGH ROY *v.* BHUGOBUTTY DASSEE [1 W. R., 133

46. ——— **Unregistered tenant.**—A za-

[[illegible] W. R., 101

Upholding on review decision in . 8 W. R., 96

47. ——— **Registered tenant affected by sale.**—A zamindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. FORBES *v.* PROTAP SINGH DOOGUR [7 W. R., 409

48. ——— **Liability of tenant for rent**

S. C. RAM COMUL MISTRY *v.* GOPEEKISTO GOSSAMEE . . . . . 1 Hay, 563

See contra, HOROMOHUN MOOKERJEE *v.* RAM COOMAR MITTER . . . 1 W. R., 225

49. ——— **Right of inamdars in respect of debts for arrears of rent.**—The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as inamdars) of Government revenue. If an inamdar fails to recover his rents by any of the special pro-

KELKAR . . . . . . 11 Bom., 37

6. INCUMBRANCES.

50. ——— **Subordinate tenures, Effect of sale on**—*Beng. Reg. VIII of 1819—Sale of patni talukh.*—On the sale of a talukh under the provisions of Regulation VIII of 1819, all subordinate tenures, such as ousut talukhs, howlas, nim-howlas, did not necessarily lapse: it depended very much upon the terms of the pottah or grant under

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

which the original talukh was created. DWARKANATH DOSS BISWAS *v.* MANICK CHUNDER DOSS [9 W. R., 200

51. ——— Tenures created by defaulter —*Beng. Reg. VIII of 1819—Sale of patni tenure.*—A sale under Regulation VIII of 1819 did not *ipso facto* annul all tenures created by the defaulting patnidar, but the purchaser, if he thought proper, could avoid them. MADHUSUDUN KUNDU *v.* RAMDHAN GANGULI

[3 B. L. R., A. C., 431: 12 W. R., 383

52. ——— Tenures created by patnidar—*Patni tenure—Act X of 1859, s. 105—Beng. Reg. VIII of 1819*—The provisions of Regulation VIII of 1819 with respect to the sale of under-tenures for arrears of rent being applicable to sales under decrees for rent made under s. 105, Act X of 1859,—*Held* that, where a sale had been effected of a "patni talukh" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated [illegible]

v. BRINDABUN CHUNDER DEY CHOWDHRY [13 B. L. R., 408: 21 W. R., 324 L. R., 1 I. A., 178

S. C. in High Court, BRINDABUN CHUNDER CHOWDHRY *v.* BRINDABUN CHUNDER SIRCAR CHOWDHRY [8 W. R., 507

53. ——— Decree as to liability to enhancement—*Beng. Reg. VIII of 1819—Right of purchaser—Suit for enhancement of rent*— [illegible]

decree. TARAPRASAD MITTRA *v.* RAM NRISINGO MITTRA . 6 B. L. R., Ap., 5: 14 W. R., 283

54. ——— Purchase by grantor of patni tenure—*Beng. Reg. VIII of 1819, s. 11, cls. 1 and 3—Rate of rent—Patni tenure.*—The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the rents realized by the patni holder in the interim. MAJORAM OJHA *v.* NILMONEY SINGH DEO [13 B. L. R., 198: 21 W. R., 326

55. ——— Right to annul tenures—*Right of lessee claiming under purchaser—Tenures not annulled by purchaser.*—Where an auction-purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor,—*Held* that it was not open to any person subsequently holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. TARA CHAND DUTT *v.* WAKENOONISSA BIBEE . . . . . 7 W. R., 91

56. ——— Power to make incumbrances—*Patni lease, Construction of—Beng. Reg. VIII of 1819.*—A patni lease containing words to the effect that the patnidar could give no dar-patni or mokurari lease at a jumma less than the jumma of the patni was held to confer no such power as that [illegible]

acquires any of the rights of the patnidar, he is bound by the acts of the latter as regards the grant of leases. MOHADEB MUNDUL *v.* COWELL 15 W. R., 445

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See MONOMOTHONATH DEY *v.* GLASCOTT [20 W. R., 275

SHAM CHAND MITTER *v.* JUGGUT CHUNDER SIRCAR [22 W. R., 50

Upheld on review . 22 W. R., 541

57. ——— Right of ejectment—*Right of purchaser of patni tenure—Waiver by acceptance of rent.*—The receipt of rent for fifteen years by the purchaser of a patni talukh sold for arrears of rent under Regulation VIII of 1819 was held to be a waiver on his part of his right to evict the tenant under cl. 2, s. 11 of that Regulation. WOOMANATH ROY CHOWDHRY *v.* ROOGOONATH MITTER [5 W. R., Act X, 63

58. ——— Bengal Rent Act, 1869, s. 66 (Beng. Act VIII of 1865, s. 16)—*Khodkasht raiyats*—The object of s. 16, Bengal Act VIII of 1865, was to protect, not merely any one class of tenants, but the leaseholder of the particular land leased: the expression "khodkasht raiyats" as used there meaning "resident and hereditary cultivators." KOONJEE DEBEE *v.* HIRDOY NATH DUBEEYA [16 W. R., 206

59. ——— *Purchaser of rights of holder of fractional share*—S. 16 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure. HARASUNDARI DASI *v.* KISTOMANI CHOWDHRAIN [5 B. L. R., Ap., 37: 13 W. R., 257

60. ——— *Right of purchaser to eject tenants.*—Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure [illegible]

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

not pass, much less did it pass free from all incumbrances; and the purchaser was not entitled to eject tenants who had been occupying and cultivating the land for more than twelve years. RAJ KISHEN MOOKERJEE *v.* DUSEUTH SOOTRODHUR

[15 W. R., 234

61. ——— *Under-tenure, Sale of—Act X of 1859, s. 105.*—Under-tenures sold for arrears of rent under s. 105 of Act X of 1859,

MOHIMA CHUNDER DEY *v.* GOOROO DOSS SEN

[7 W. R., 285

INDUR CHUNDRA DOOGUR *v.* RUTTUN KOOMAREE BIBEE . . . . . 7 W. R., 376

The above Full Bench decision did not apply where the tenure itself was not sold DOORGA SOONDUREE DEBIA *v.* DINOBUNDHOO KYBURTO DOSS

[8 W. R., 475

62. ——— *Sale of sub-tenure—Beng. Reg. VIII of 1831.*—Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent,—*Held* that, in a sale for arrears of rent under Regulation VIII of 1831, the purchaser did not take free from incumbrances created by the grantee The decision in *Shahaboodeen v. Futteh Ali, B. L. R., Sup. Vol., 646,* affirmed. FORBES *v.* LUTCHMEPUT SINGH

[10 B. L. R., 139 : 17 W. R., 197
14 Moore's I. A., 330

MOHESH CHUNDER BANERJEE *v.* CHUNDER MONEE DEBI . 10 B. L. R., 150 note: 15 W. R., 237

63. ——— *Beng. Act VIII of 1865.*—An auction-purchaser under Act VIII of 1865 was not at liberty, without notice of his intention to cancel a pre-existing under-tenure, or other act on his part, to avoid any incumbrance. GOBIND CHUNDER BOSE *v.* ALIMOODDEEN 11 W. R., 160

64. ——— *Survival of incumbrances.*—The sale of a tenure under s. 16, Bengal Act VIII of 1865, did not *ipso facto* annul

[5 B. L. R., A. C., 100

S. C. WOOMA SOONDUREE DOSSIA *v.* BEEREUL MUNDUL . . . . . 11 W. R., 563

65. ——— *Voidable incumbrances.*—Under Bengal Act VIII of 1865, s. 16, under-tenures became void *ipso facto* by the sale and were not merely voidable at the option of the purchaser. UNNODA CHURN DASS BISWAS *v.* MOTHURA NATH DASS BISWAS

[I. L. R., 4 Calc., 860 : 4 C. L. R., 6

66. ——— *Suit to set aside incumbrances.*—The right which an auction-purchaser has under the Rent Law, s. 66, to do away with under-tenures cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances. RAJ BULLUBH MITTER *v.* SREERAM SIRCAR

[25 W. R., 109

67. ——— *Patni tenure—Dar-patni tenure—Under-tenure—Incumbrance—Beng. Act VIII of 1869, ss. 59, 60.*—The sale of a patni tenure for its own arrears under ss. 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the dar-patni tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of s. 66, Bengal Act VIII of 1869 TITU BIBI *v.* MOHESH CHUNDER BAGCHI . . . . I. L. R., 9 Calc., 683

S. C. TITU BIBI *v.* IBRAHIM MOLLAH

[12 C. L. R., 304

68. ——— *Brick-built house.*—A brick-built house was not an "incumbrance," or a tenure within the meaning of that word in s. 16 of Bengal Act VIII of 1865 which a purchaser at a sale for arrears of rent could remove. SHIBDAS BANDAPADHYA *v.* BAMANDAS MUKHOPADHYA

[8 B. L. R., 237 : 15 W. R., 360

69. ——— *Mortgage by defaulting tenant—Act X of 1859, s. 105.*—A mort-

BHUTTACHARJEE . . . 3 W. R., 217

70. ——— *Title acquired—Adverse possession.*—If the holder of an under-tenure allowed his tenant to occupy the land rent-free for more than twelve years, the interest thus created in the latter was an incumbrance upon the under-tenure as much within the reason of Bengal Act VIII of 1865, s. 16, as if the holder had made a rent-free grant or given a nominal lease. MAHOMED ASKUR *v.* MAHOMED WASUCK . 22 W. R., 413

71. ——— *Right of occupancy under Act X of 1859, s. 6—Right of pur-*

PURSDAG SINGH *v.* PURTAB NARAYAN SINGH

[5 B. L. R., Ap., 20 : 11 W. R., 253

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

BHOLANATH GHOSSAL *v.* KEDARNATH BANERJEE [19 W. R., 106

EMAM ALI MESTORY *v.* ATOR ALI KHAN [22 W. R., 133

72. ———— *Intermediate holding* ...
a sale h...
right to ...
a howl...
howlada...
rents. ...
KOONDOO ... 22 W. R., 311

73. ———— *Rights of a purchaser at an auction-sale held under Beng. Act VIII of 1865 when in collusion with the former* ...

purchase to the plaintiff. Under this arrangement, ...

74. ———— *Shikmi tenure.*—Where a shikmi tenure was sold under Bengal Act VIII of 1865 and the shikmidar was found to be the ...

brances of a jummai tenure of a person who was not a khodkhast raiyat. HUBEE NARAIN CHATTERJEE *v.* WOOMA CHURN MOOKERJEE . 19 W. R., 169

75. ———— ...

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

See SRINATH CHUCKERBUTTY *v.* SRIMANTO LASHKAR [8 B. L. R., 240 note: 10 W. R., 467

76. ———— *Incumbrance created with sanction of zamindar.*—In a suit by a ...

defendants held was created by the late holder with the express sanction of the zamindar,—*Held* that ...

subsequent written authority of the person who created it, or his representatives. ESHAN CHUNDER MOJOOMDAR *v.* HURISH CHUNDER GHOSE [21 W. R., 137

77. ———— *Avoidance of incumbrance—Beng. Act VIII of 1869, ss. 59, 60* —On a partition of the joint family property, a ...

SONNO GHOSE *v.* KALIDAS DUTT 9 C. L. R., 449

78. ———— ... *VIII of 1819, s. 11—Cancelment of* ... Lands appertaining to a certain talukh ... under Regulation VIII of 1819 for arrears ... the owner of the talukh ... under which the plaintiff, who sued ... confirmation of his title, cultivated ... persons called burgaits, with ... fits in some way. *Held* that ... the Regulation the plaintiff's ... Compare *Unnoda Churn Das v. Dass, I. L. R., 4 Calc., 860;* & ... *moyee v. Suttees Chunder* ... *Moore's I. A., 123,* cited and ... CHUNDER MOZUMDAR *v.* ...

79. ———— Beng. ... s. 11—"*Defaulting pr*... *created* ... *lease,* ... In 1839 a ... of

SALE FOR ARREARS OF RENT *—continued.*

6. INCUMBRANCES—*continued.*

patnidar of a patni created in 1819. In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari.

defaulter in 1885, had not interfered with the

inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases," it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni

MOKADDAM HOSSAIN . I. L. R., 21 Calc., 702

80. ——————— cl. (3)—*Occu-*

protected from ejectment by the terms of cl 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. JOGESHWAR MAZUMDAR *v.* ABED MAHOMED SIRKAR [3 C. W. N., 13

——— **Bengal Tenancy Act (VIII** **s. 161**—*Exchange of land—Suit for ...f land.*—Exchange of land is

an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SAHAI *v.* KALLI PROSANNO CHUKERBUTTY [I. L. R., 23 Calc., 254

82. ——————— **and s. 171**—*Payment by person interested to prevent sale—Mortgage—Incumbrance.*—A mortgage created by the operation of s. 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA *v.* NARAYANI DASSI . I. L. R., 24 Calc., 537 [1 C. W. N., 519

83. ——————— **and s. 167**—*Notice—Mortgage.*—A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA *v.* REWAT LALL [I. L. R., 24 Calc., 746

84. ——————— **s. 167**—*Effect of service of notice—Annulling of incumbrance—Property in possession of a person other than the purchaser.*—Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the pur-

possession of the purchaser, but of somebody else. PEARI LAL ROY *v.* MOHESWARI DEBI [I. L. R., 25 Calc., 551

85. ——————— **and ss. 65, 148, 161, and 176**—*Estoppel—Mortgagor and mortgagee—Order in execution proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*—By a mortgage-bond, dated the 22nd August 1884,

before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to *G*, a benamidar for *P*, for execution, and on his seeking to execute them, he was opposed by *K* on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as *G* the

SALE FOR ARREARS OF RENT —*continued*

6 INCUMBRANCES—*continued*.

assignee had acquired no interest in the talukhs, his application for execution could not be granted under s. 148, cl (*h*), of that Act. On the 9th July 1886 the Court overruled this objection, and ordered execution to issue, holding that, as the decrees in the rent-suits were passed before the Tenancy Act came into operation, the execution should proceed under the old law. In execution of the decrees, the two talukhs were put up for sale, and purchased by *G* as benamidar for *P*. In a suit brought by the plaintiff, the mortgagee, against *K* and *P* (and others representing others of the six talukhs), it was contended, so far as the two talukhs were concerned, that the plaintiff, though not a party to the execution proceedings, was bound by the order of the 9th July 1886, made in the course of these proceedings; that *P*, having purchased the two talukhs at sales for arrears of rent, had acquired them free from all incumbrances, that the plaintiff's mortgage was not a notified incumbrance within the meaning of s. 161 of the Tenancy Act, and that he was therefore not entitled to have his mortgage-lien declared against the two talukhs. *Held* (affirming the judgment of the lower Appellate Court) that the plaintiff was not bound by the order of the 9th July 1886, *K*, the mortgagor, not representing his interest sufficiently to make that order binding on the plaintiff as mortgagee. *Dooma Sahoo* v. *Joonarain Lall, 12 W. R., 362: 4 B. L. R., A. C., 17 note; Tribhobun Singh* v. *Jheno Lall, 18 W. R., 266; Bonomali Nag* v. *Koylash Chunder Dey, I. L. R., 4 Calc., 692; Madho Pershad Singh* v. *Purshan Ram, I. L. R., 4 Calc., 520*, and *Sitaram* v. *Amir Begam, I. L. R., 8 All., 324*, referred to. The proprietor of an estate cannot be said to represent the whole estate

or the succeeding shebait. The interest of a mortgagee in an estate may be greater than that left in the mortgagor, or, as in the present case where it was no part of the mortgagor's interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical; the balance of justice and expediency therefore is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor. *Nor is there* anything in the provisions of the rent-law against that view. A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure, who can show no sufficient cause for not registering his name, and may be

Pershad Singh v. *Purshan Ram, I. L. R., 4*

SALE FOR ARREARS OF RENT —*continued*.

6. INCUMBRANCES—*continued*.

Calc., 520, referred to. *Held* also that, though the rent-decrees were passed under the old rent law, the assignment and the application by the assignee for execution having been made after the Bengal Tenancy Act came into force, cl. (*h*) of

decree to apply for execution, and in this case

tenures for arrears of rent, and that mode not having been followed in this case, the incumbrance on the two talukhs was not annulled S. 65 of the Tenancy Act, which provides that "the tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon," only intends what is laid down in Ch. XIV of the Act, namely, that the charge should be enforced by the sale of the tenure or holding free of incumbrances; and if in any case the decree for rent either has not been, or cannot be, enforced by the sale of the tenure, the charge created by s. 65 cannot be enforced in any other way. No reason, therefore, could be shown under that section for making the sale in satisfaction of the plaintiff's mortgage, subject to the rent-decree as a first charge SOSHI BHUSUN GUHA *v.* GOGAN CHUNDER SHAHA

[I. L. R., 22 Calc., 364

86. ——————— and s. 165—*Notice to annul encumbrance, whether necessary, when the purchaser and incumbrancer are the same person.*—After a mortgage-decree was passed, the mortgaged property was sold in execution of a decree for rent and was purchased by the

the purchaser were one and the same person. The mortgagee decree-holder preferred a second appeal. *Held* that, even if the sale was under s 165 of the

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default

lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases," it might be

MOKADDAM HOSSAIN . I. L. R., 21 Calc., 702

80. ———— cl. (3)—*Occu-*

81. ——— Bengal Tenancy Act (VIII of 1885), s. 161—*Exchange of land—Suit for recovery of possession of land.*—Exchange of land is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SAKAI *v.* KALLI PROSANNO CHUKERBUTTY [I. L. R., 23 Calc., 254

82. ———— and s. 171—*Payment by person interested to prevent sale—Mortgage—Incumbrance.*—A mortgage created by the operation of s 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA *v.* NARAYANI DASSI . I. L. R., 24 Calc., 537 [1 C. W. N., 519

83. ———— and s. 167—*Notice—Mortgage.*—A sale purporting to be under s 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA *v.* REWAT LALL [I. L. R., 24 Calc., 746

84. ———— s. 167—*Effect of service of notice—Annulling of incumbrance—Property in possession of a person other than the purchaser.*—Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the pur-

possession of the purchaser, but of somebody else. PEARI LAL ROY *v.* MOHESWARI DEBI [I. L. R., 25 Calc, 551

85. ———— and ss. 65, 148, 161, and 176—*Estoppel—Mortgagor and mortgagee—Order in execution proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*—

gust 1884, our of the the mort- lakhs suits arrears of June 1885,

before the coming into operation of the Bengal Tenancy Act (VIII of 1885) After that Act had come into force, these decrees were assigned to *G*, a benamidar for *P*, for execution, and on his seeking to execute them, he was opposed by *K* on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as *G* the

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

under the old law. In execution of the decrees, the two talukhs were put up for sale, and purchased by *G* as benamidar for *P*. In a suit brought by the plaintiff, the mortgagee, against *K* and *P* (and others representing others of the six talukhs), it was contended, so far as the two talukhs were concerned, that the plaintiff, though not a party to the execution proceedings, was bound by the order of the 9th July 1886, made in the course of these proceedings; that *P*, having purchased the two talukhs at sales for arrears of rent, had acquired them free from all incumbrances; that the plaintiff's mortgage was not a notified incumbrance within the meaning of s. 161 of the Tenancy Act; and that he was therefore not

Nag v. *Koylash Chunder Dey, I. L. R., 4 Calc., 692*; *Madho Pershad Singh* v. *Purshan Ram, I. L. R., 4 Calc., 520*; and *Sitaram* v. *Amir Begam, I. L. R., 8 All., 324*, referred to. The proprietor of an estate cannot be said to represent the whole estate after he has mortgaged it; and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow, or shebait, who are held to represent the estate so as to bind the reversioner or the succeeding shebait. The interest of a mortgagee in an estate may be greater than that left in the mortgagor, or, as in the present case where it was no part of the mortgagor's interest to protect the incumbrance, the interests of the mortgagor and mortgagee are *not identical*; the balance of justice and expediency therefore is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor. Nor is there anything in the provisions of the rent-law against that view. A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure, who can show no sufficient cause for not registering his name, and may be enforced by sale of the tenure [*Sham Chand Kundu* v. *Brojonath Pal Chowdhry, 12 B. L. R., 434*; *21 W. R., 94*]; but whether any such sale was in

Pershad Singh v. *Purshan Ram, I. L. R., 4 Calc., 520*, referred to. *Held* also that, though the rent-decrees were passed under the old rent law, the assignment and the application by the assignee for execution having been made after the Bengal Tenancy Act came into force, cl. (*h*) of

by an assignee, and that is a matter of procedure. If any right is affected, it is not a right of the decree-holder, but the right of the assignee of the decree to apply for execution, and in this case

tenures for arrears of rent, and that mode not having been followed in this case, the incumbrance on the two talukhs was not annulled. S. 65 of the Tenancy Act, which provides that "the tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon," only intends what is laid down in Ch. XIV of the Act, namely, that the charge should be enforced by the sale of the tenure or holding free of incumbrances; and if in any case the decree for rent either has not been, or cannot be, enforced by the sale of the tenure, the charge created by s. 65 cannot be enforced in any other way. No reason, therefore, could be shown under that *section for making the sale in* satisfaction of the plaintiff's mortgage, subject to the rent-decree as a first charge. SOSHI BHUSUN GUHA *v* GOGAN CHUNDER SHAHA

[I. L. R., 22 Calc., 364

86. ———————— and s. 165—*Notice to annul encumbrance, whether necessary, when the purchaser and incumbrancer are the same person.*—After a mortgage-decree was passed, the mortgaged property was sold in execution of a decree for rent and was purchased by the mortgagee decree-holder. The mortgage-decree pro-

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

Bengal Tenancy Act, the incumbrance had not been annulled by proceedings under s. 167, and the appeal ought to be dismissed. GOLUK CHUNDER DAS *v.* RAM SUNKER SUTT . . 4 C. W. N., 268

87. ———— "*Purchaser,*" *Meaning of—Incumbrance, Annulment of, when purchaser himself is the incumbrancer—Transfer of Property Act (IV of 1882), s. 101.*—The purchaser contemplated by s. 167 is a purchaser independently of the incumbrancer, and where the incumbrancer himself purchases the property encumbered to him, in execution of a decree for arrears of rent, it is not necessary for him to give

mortgagee has purchased the mortgaged property in execution of a rent decree, he is entitled to proceed against the other propeities of the mortgagor. *Goluk Chunder Das* v. *Ram Sunker Sutt, 4 C. W. N, 268,* dissented from. MASTULLAH MANDAL *v.* GYAN MAMUD SAH . . . . 4 C. W. N., 735

88. ———— Madras Rent Recovery Act,

sale under the Act or the rights of the purchaser at such sale. KONDI MUNISAMI CHETTI *v.* DAKSHANAMURTHI PILLAI . I. L. R., 5 Mad., 371

89. ———— *Purchase by*

the Rent Recovery Act. The creditor subsequently

90. ———— *Sale of tenant's interest—Prior incumbrance—Rights of purchaser.* —A sale by a landlord of a tenant's interest in his

See ZAMINDAR OF RAMNAD *v.* RAMAMANY AMMAL . . . . I. L. R., 2 Mad., 234

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*concluded.*

91. ———— *Mulageni lease—Encumbered tenancy.*—A demised land to *B* on a

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on the tenant's holding, and accordingly that the landlord could not execute his decree by sale of the tenancy free from the mortgage created by the tenant. *Rajagopal* v. *Subbaraya, I. L. R, 7 Mad, 31,* followed. PADAKANNAYA *v.* NARASIMMA

[I. L. R., 10 Mad., 266

7. RIGHTS AND LIABILITIES OF PURCHASERS.

92. ———— Right of purchaser—*Right to khas possession.*—A raiyat's tenure having been sold for arrears of rent under an Act X decree, the purchaser was held to be entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the raiyat had been occupying huts on the land for more than twenty years The circumstance that the purchaser happened to be the superior landlord did not diminish his right TEELOTTUMA DEBEE *v* BROJO LALL SHAMUNT . . . 8 W. R., 478

93. ———— *Right to nij-jote land.*—The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. JOY DUTT JHA *v.* BAYEE RAM SINGH . 7 W. R., 40

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GUMBUREE DOSSEE . . W. R., 1864, 207

95. ———— *Right to rent—Liability of patnidar for rent—Beng. Reg. VIII*

petition enjoined by cl 3, s. 8, Regulation VIII of 1819. DARIMBA DEBIA *v.* NILMONEE SINGH DEO [15 W. R., 180

96. ———— *Right to rent—*

owner of the talukh in the zamindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account. OBHOY CHUNDER BUNDOPADHYA *v.* NILAMBUR MOOKERJEE [W. R., 1864, 73

SALE FOR ARREARS OF RENT —*continued.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

97. ———— *Sale under Beng. Act VIII of 1865—What passes at sale.*—As a

GOBIND BISWAS *v.* DUMOUNTEE DABEE [13 W. R., 304

98. ———— *Purchaser of shareholder's rights—Sale under Beng Act VIII of 1865*—The purchaser of a partnership in a tenure—in other words, of a shareholder's rights—acquired no right to

bought the

Bengal Act

v. DURGA

99. ———— *Purchase by shareholders—Ousut howlas, Effect of sale on—Recorded tenants.*—A shareholder is not precluded from purchasing the whole of a howla sold *bonâ fide* for arrears of rent due from himself and his co-sharer. All ousut howlas created by the co-sharers fall with the sale of a howla unless specially protected by the howla lease A zamindar may bring a suit for arrears only against the tenant whose name is

CHURN BOSE *v.* MEHAROONISSA BIBEE [7 W. R., 318

100. ———— *Liability of co-sharers on sale of tenure*—Where a decree was for arrears of rent due upon a tenure, it was held that, though the sale-proceedings specified that the rights and interests of certain parties were sold, yet the tenure itself was sold, and all the co-sharers were jointly liable ALIMCODDEEN *v.* SABIR KHAN [8 W. R., 60

Contra, LALLA SABIL CHAND *v.* GOODUR KHAN [22 W. R., 187

101. ———— *Right of purchaser of transferable under-tenure to void leases—Right to enhance rent.*—The purchaser of a transferable under tenure in execution of a decree for rent may

102. ———— *Act X of 1859, s 105—Beng. Reg. VIII of 1819, s. 11—Title created by purchaser.*—Where a tenant committed default, and purchased the tenure when it was sold in execution of a decree against himself, he could not claim the benefit of the law relating to auction-purchasers under s 105 of Act X of 1859 and s 11, Regulation VIII of 1819, and asked the Court to set aside the title of a third party which had been created by himself. Where he himself has sold to a third party, he is bound to recognize that party's purchase, and also all *bonâ fide* leases under that party Where the lease by which a howla tenure is created does not expressly reserve it for sale for non-payment of rent, the rights of an auction-purchaser cannot arise under Regulation VIII of 1819. MEHEROONISSA BIBEE *v.* HUR CHURN BOSE [10 W. R., 220

103. ———— *Principle with*

WOMANATH ROY CHOWDHRY *v.* ROGHOONATH MITTER . . 5 W. R., Act X, 63

104. ———— *Rent accrued due against Hindu female heir after death of last full owner—Effect of sale in execution under Beng. Act VIII of 1869—Personal execution against female heir.*—A claim for arrears of rent against a female heir accrued due after the death of the last

Brij Bhookun Lall, I. L. R., 1 Calc., 133 L. R., 2 I. A., 275, and *Mohima Chunder Roy Chowdhry v Ram Kishore Acharjee Choudhry, 15 B. L. R., 142 23 W. R., 174*, followed. BRAJA LAL SEN *v.* JIBAN KRISHNA ROY . . I. L. R., 26 Calc., 286

105. ———— Liability of purchaser—*Date from which purchaser's liability for rent commences.*—The purchaser of a tenure at a sale for arrears of rent was held to be liable for rent from the date on which the sale was confirmed, for until confirmation he could not obtain the certificate of purchase. BEEPIN BEHAREE BISWAS *v.* JUDOONATH HAZRAH . . . 21 W. R., 367

106. ———— *Liability to condition in lease—Right of re entry.*—A dar-patni

SALE FOR ARREARS OF RENT —*continued.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

107. ——— *Liability to decree in ejectment suit—Previous purchase by mortgagee of portion of tenure—Right of purchaser to*

cancelled. *Held* that a mortgagee from the dar-mokuraridar, who had, previously to the rent suit,

ordering ejectment of the dar-mokuraridar. MADHOO PROSHAUD SINGH *v.* PURSHAN RAM [I. L. R., 4 Calc., 520

108 ——— *Priority of auction-purchasers—Sale set aside by an ex-parte decree and afterwards confirmed—Notice.*—The plaintiff and the defendant purchased the same tenure at successive sales, held in execution of two decrees under the provisions of s. 59 of Act VIII of 1869, for arrears of rent due in respect of different periods. Defendant's sale was first in point of time,

plaintiff RAM CHUNDER SADHU KHAN *v.* SAMIR GAZI . . . I. L. R., 20 Calc., 25

109. ——— *Patni tenure, Sale of—Registration in zamindar's serishta—Rights of zamindar—Beng. Reg VIII of 1819, ss 5, 7—Bengal Tenancy Act (VIII of 1885), s. 13.*—A patni talukh was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the zamindar's serishta. In a suit by the zamindar against the former holder of the patni for rent due for a period previous to the sale,—*Held* that the suit lay against him, and that the rights of the zamindar were not affected by the existence of the remedy provided

110. ——— *Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of 1885), ss. 65 and 169, cl (c)—Rent, Suit for.*—The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April 1888. In execution of that decree, the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891. *Held* that the auction-purchasers (defendants 6, 7, and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. FAEZ RAHAMAN *v.* RAMSUKH BAJPAI [I. L. R., 21 Calc, 169

111. ——— *Sale on basis of decree on compromise—Auction-purchaser, Title of—Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, Accrual of—Bengal Tenancy Act, s. 53.*—A

decree passed on the basis of the solehnama, and was purchased by the defendant on the 20th March 1889, the sale being confirmed on the 7th August 1889. In a suit instituted by the landlord against the auction purchaser for arrears of rent for the whole year 1296 (13th April 1889 to 12th April 1890),—*Held* that the purchaser was liable for the whole instalment of rent accrued due after the date of his purchase, but before the confirmation of the sale, notwithstanding that his title was not perfected until the latter date. Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract according to the general law laid down in s. 53 of the Bengal Tenancy Act. *Held* also that he was liable for rent under the terms of the solehnama irrespective of any question as to whether the quantity of land there mentioned was correct or not. SATYENDRA NATH THAKUR *v.* NILKANTHA SINGH . I. L. R., 21 Calc., 383

112. ——— *Bengal Tenancy Act (VIII of 1885), ss. 11, 12, and 13—Sale of a tenure in execution of a decree not for arrears of rent—Effect of non-payment of landlord's fee or the*

113 ——— **Right of purchaser**—*Sale of tenant's interest by creditor—Subsequent sale by*

SALE FOR ARREARS OF RENT —*continued.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

landlord for arrears of rent—Right of purchaser.—The right, title, and interest of a tenant in certain land having been attached, sold, and purchased in

landlord under the provisions of s. 38 of the Rent Recovery Act. VIRAPPA NAYAK *v.* KATHANA TALAVACHI . . . I. L. R., 6 Mad., 428

114. ——— *Sale of occupancy holding at the instance of landlord in execution of money-decree—Subsequent sale of the same for arrears of rent—Bengal Tenancy Act (VIII of 1885), s 22—Damages—Refund of purchase-money*—Defendant No. 10, the landlord, in

No. 1 to a termination, and there was no subsisting right in that defendant such as the plaintiff could acquire by sale *Held* further that the plaintiff was entitled to get a refund of the purchase money from the landlord, and that a separate suit for that purpose was not necessary RAM SARAN PODDAR *v.* MAHOMED LATIF . . . 3 C. W. N., 62

115. ——— *Mortgage of*

SALE FOR ARREARS OF RENT —*continued.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*concluded.*

property, nor is the mortgagee entitled in every case

MADAK . . 2 C. W. N., 29

8. SECOND SALE.

116. ——— Sale for prior arrears after sale for arrears of rent.—Where a tenure has once been sold for its own arrears, it cannot be again put up to sale for the arrears due on account of a previous period. *Lutifun v. Meah Jan, 6 W. R., 112*, followed. PRANGOUR MOZOOMDAR *v.* HIMANTA KUMARI DEBYA

[I. L. R., 12 Calc., 597

9 SURPLUS PROCEEDS OF SALE.

117. ——— Right to surplus proceeds —*Attachment in hands of Collector.*—The surplus proceeds of a sale made for default of payment of *patni rent, though under attachment by a Civil* Court in the hands of the Collector, continues to be the property of the patnidar until ordered to be paid away by an order from such Court. SADFOOLLAH KHAN *v.* LUCHMEEPUT SINGH DOOGUR

[13 W. R., 58

118. ——— *Priority—Surplus proceeds of sale under s 59, Beng. Act VIII*

credit of the dar-patnidar. Afterwards in December 1876 the patnidar brought another suit for the dar-patni rent due in respect of the period between April and October 1876, and having obtained a decree attached the surplus proceeds in the Collectorate, which were at the same time attached by two other holders of ordinary decrees. *Held* that the decree of the patnidar, although for rents of the current year, had no priority over the other decrees; and that the surplus proceeds of the sale of the dar-patni tenure formed part of the assets of the late dar-patnidar, and were not hypothecated to the patnidar for the rent of the year current. GRISH CHUNDER MUNDUL *v.* DOORGA DOSS . I. L. R., 5 Calc., 494

SALE FOR ARREARS OF RENT —*continued.*

9. SURPLUS PROCEEDS OF SALE—*continued.*

119.——————— *Beng. Reg. VIII of 1819, s. 17, cl. (5)—Patni talukh—Attachment — Priority.*—The patnidar of a talukh granted a

expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th of November 1876. On the 12th January 1877 the defendants instituted a suit against the patnidar, under cl. 5, s. 17, Regulation VIII of 1819, for compensation for the loss of the dar-patni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds, and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attach-

120.——————— *Sale of patni—Mortgage security, Conversion of—Surplus sale-proceeds, Charge of mortgagee upon—Transfer of Property Act (IV of 1882), s. 73.*—A patni talukh having been sold for arrears of rent under Regulation VIII of 1819, the surplus sale-proceeds held in deposit in the Collectorate were drawn out at intervals by the holders of money decrees against the patnidars. The plaintiff, who held a mortgage of the talukh, sued

liable. *Held* that the surplus sale-proceeds were to

him out of the whole of the surplus, as otherwise his security would be diminished. GOSTO BEHARY PYNE *v.* SHIB NATH DUTT . I. L. R., 20 Calc., 241

121. ——————— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—mortgage.*—S. 73 of the Transfer of

purchaser at a sale for arrears of revenue or rent.

SALE FOR ARREARS OF RENT —*continued.*

9. SURPLUS PROCEEDS OF SALE—*concluded.*

Prem Chand Pal v. Purnima Dasi, I. L. R., 15 Calc., 546 referred to. BENI PROSAD SINHA *v.* REWAT LALL . . I. L. R., 24 Calc., 748

122. ——————— *Beng. Reg. VIII of 1819, s. 17—Distribution of surplus sale-proceeds—Claim by se-patnidar.*—A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VII of 1819. MOTI LAL GHOSE *v.* BISSESSUR HAZRA . . . . . 3 C. W. N., 60

10. DEPOSIT TO STAY SALE.

123. ——————— Right to sue—*Voluntary payment to stay sale—Act X of 1859, ss. 102, 103.*—A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under s. 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. ABDOOL WAHAB *v.* DRUMMOND

[2 W. R., Act X, 48

124. ——— Party with recognized interest—*Beng. Reg. VIII of 1819 s. 14, cl. 1.*—Cl. 1, s. 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the

BUKSHEE *v.* MACKINTOSH . W. R., 1864, 53

125. ——————— Sufficiency of interest—*Suit to recover money deposited.*—The plaintiff's mother brought a suit to recover a portion of a talukh

DOSSEE *v.* MOHINEE MOHUN GHOSE

[20 W. R., 272

126. ——————— Voluntary payment—*Right of mortgagee to prevent sale of mortgaged property—Voluntary payment.*—The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent. *Held*

RAM PURSONO CHOWDHRY

[I. L. R., 4 Calc., 539: 3 C. L. R., 280

SALE FOR ARREARS OF RENT—*continued.*

10. DEPOSIT TO STAY SALE—*continued.*

See Dulichand *v.* Ramkishhen Singh
[I. L. R., 7 Calc., 648

127. ——— *Sale of transferable tenures under s. 105, Act X of 1859—Right of suit.*—The right to make payments to preserve an [illegible]

[illegible]

impliedly authorized, they must be regarded as voluntary payments, for the recovery of which no action will lie. Sreenath Holdar *v.* Ram Soondur Chuckerbutty . 4 W. R., S. C. C. Ref, 4

128. ——— *Right of suit.*—An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. Ambika Debi *v.* Pranhari Das
[4 B. L. R., F. B., 77

S. C. Umbika Debia *v.* Pranhuree Doss
[13 W. R., F. B., 1

129. ——— *Right of suit—Beng. Reg. VIII of 1819—Non-registration of transfer.*—*L* and *R*, the holders of a patni estate, [illegible]

[illegible]

mutation was ever effected by *K*, who was never [illegible]

[illegible]

regular suit against *S* and *L* and *R* to recover the [illegible]

[illegible]

SALE FOR ARREARS OF RENT—*continued.*

10. DEPOSIT TO STAY SALE—*continued.*

in the Collectorate. Luckhinarain Mitter *v.* Khettro Pal Singh Roy
[13 B. L. R, P. C., 146: 20 W. R., 380

Affirming the decision of the High Court in S. C. Khetter Paul Singh *v.* Luckhee Narain Mitter
[15 W. R., 125

Okhoy Coomar Chatterjee *v.* Dhiraj Mahtab Chund . . . . . 23 W. R., 299

130. ——— *Payment made by vendee of dar-patnidar—Voluntary payment.*—A payment made by the vendee of the dar-patnidar (who has not obtained registration) to save the patni from sale is a voluntary payment, and the registered dar-patnidar cannot seek to deduct the amount from the rent due by him. Lukheenarain Mitter *v.* Seetanath Ghose
[1 Ind. Jur., N. S, 317: 6 W. R., Act X, 8

131. ——— *Payment of patni rent by dar-patnidar—Beng. Reg VIII of 1819, s. 13.*—In a suit by the purchaser of a patni against a dar-patnidar for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the dar-patnidar had paid the amount of arrears of patni rent for the year 1284 (1877), in [illegible]

[illegible]

deduct from the rent claimed the amount paid under the Regulation in excess of the dar-patni rent due up to the end of 1284. Nobo Gopal Sircar *v.* Srinath Bundopadhya
[I. L. R., 8 Calc., 877: 11 C. L. R., 37

132. ——— *Payment by dar-patnidar—Beng. Reg. VIII of 1819—Beng. Act VIII of 1869, s. 62.*—The zamindar of an estate, in which the plaintiff and defendant respectively had purchased patni and dar-patni tenures, obtained decrees for arrears of rent accruing before their purchases, [illegible]

[illegible]

to protect the tenure from sale. In a suit by the [illegible]

[illegible]

133. ——— *Payment by dar-patnidar—Notice of title to tenants—Beng. Reg. VIII of 1819, s. 13.*—A dar-patnidar who has paid a deposit in order to stay the sale of the superior tenure under cl. 4, s. 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it, is bound to give notice

SALE FOR ARREARS OF RENT —*continued.*

10. DEPOSIT TO STAY SALE—*continued.*

of his title to the raiyats In the absence of such notice, he cannot recover from them rents already paid by them to the patnidar NILMONEE ROY *v.* HILLS . . . . 4 W. R., Act X, 38

134. ———— *Payment by shikmidar—Money paid to preserve estate from sale.*—A shikmidar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. POORNO CHUNDER DOSS CHOWDHRY *v.* SREENATH GOOPTO . . . . 6 W. R., 173

135. ———— *Right to contribution from co-sharers.*—A shareholder who pays up arrears of rent due from the whole of the tenure in order to save it from sale in execution is entitled to recover contribution from other shareholders who were in possession during the period within which the arrears accrued, even though the tenure should be in the name of another and the decree be nominally against such other alone. ASUDOOLLAH *v.* MONOHUR DOSS . . 22 W. R., 531

136.———— *Compulsory payment—Right to recover.*—Plaintiff, to save the patni from sale for arrears of rent of a former year which had been adjudged by an apparently valid decree to be due to the defendant, paid the money. *Held* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. ANDREW *v.* LARMOUR . 2 Ind. Jur., O. S., 4 : 1 Hay, 309

137. ———— *Suit to recover money paid—Beng. Reg. VIII of 1819*

mirasidar to recover the portion he ought to have

[12 W. R., 313

138 ———— *Suit to recover money paid*—The plaintiff purchased an estate at an auction-sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April 1866. While he was in possession, one *K*, the patnidar,

in possession of the plaintiff was attached and ordered by the Collector to be sold; whereupon the

plaintiff paid the amount of the decree to save the

[8 B. L. R., 10 note: 10 W. R., 446

139. ———— *Suit to recover money paid*—A patni tenure which had been attached by *G* in execution of a decree against *D* was claimed by *S*, whose claim was allowed Upon this *G* instituted a suit against *S* and others to

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CHUCKERBUTTY *v.* UODOY LALL DEY

[10 W. R., 115

140. ———— *Suit to recover money paid.*—The plaintiff purchased at an execution sale a share of *K*'s tenure which had been attached on account of a money-decree Subsequently the whole tenure was advertised for sale in execution of a decree for arrears of rent On applying to the

ther officious nor voluntary, and that *K*, who had enjoyed the profits of the land, was equitably liable for the sum paid to save it from sale. KHETTUR MOHUN BANERJEE *v.* HARADHUN CHATTERJEE

[19 W. R., 287

141. ———— *Unconditional tender—Beng. Reg. VIII of 1819*—KEMP, J.—A tender to stay a sale under Regulation VIII, 1819, must be of the whole of the zamindar's demand and without any condition as to its being kept in deposit by the Collector RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . 17 W. R., 122

142. ———— *Payment to zamindar—Beng. Reg. VIII of 1819, s. 13—Payment*

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SALE FOR ARREARS OF RENT —*continued.*

10. DEPOSIT TO STAY SALE—*concluded.*

for which the notice of sale may have been published, is satisfied by payment ... to the ... were put ... effectual ... Court" ... are managed by the Collector. TARINY DEBEE v. SHAMA CHURN MITTER . I. L. R., 8 Calc., 654

143. ——————— *Nature of payment—Loan to proprietor—Beng. Act VIII of 1865, s. 6.*—Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of ... amount from any profits belonging to the tenure. KARTICK SURMAH v. BYDONATH SAFENEE [10 W. R., 205

144. ——————— Position of person making payment—*Beng. Reg. VIII of 1819—Suit for share of patni estate—Mortgagee.*—Plaintiff claimed an eight annas share of a patni as purchased by the official assignee of an insolvent, *D*, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the patni of which defendant's ancestor, *G*, having deposited arrears of rent, was in possession as girurdar under the provisions of Regulation VIII of 1819. *Held* that *G* was substantially in the same position as a mortgagee in possession under an usufructuary mortgage; and that plaintiff, as a purchaser from such a mortgagor, would have no cause of action until the debt was paid off. *Held* that, as defendant's plea of purchase from the alleged shareholders of the patni, in satisfaction of their ancestor *G's* ... the purpose." BOISTUB CHURN BHUDRO v. TARA CHAND BANERJEE . . 11 W R., 357

11. SETTING ASIDE SALE

(*a*) GENERAL CASES.

145. ——————— Civil Procedure Code (1882), s. 310A—*Civil Procedure Code Amend* ...

KRISHNADHAN NATH v DAMAYANTI DEVI [I. L. R., 23 Calc., 396 note

BEHARY LAL SEAL v RUSSICK CHUNDER PAL [I. L. R., 23 Calc., 396 note

BUNGSHIDHAR HALDAR v KEDARNATH MONDAL [1 C. W. N., 114

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

146. ——————— *Order under* s. 310, Civil Procedure Code ... to purchaser ... notice ... NGSHI- ... [1 C. W. N., 114

147. ——————— S. 310A of the Civil Procedure Code does not apply to sale under ... [1 C. W. N., ...

(*b*) IRREGULARITY.

148. ——————— Beng. Reg. VIII of 1819, s. 8, Application of—*Junglebari tenures*—S. 8, Regulation VIII of 1819, refers to junglebari tenures that existed at that time, and its provisions do not apply to any tenure created since the passing of that Regulation. MONMOHUN SINGH v. WATSON & Co. [2 Hay, 398

149. ——————— Beng. Reg. VIII of 1819, s. 8, Construction of ...

150. ——————— *Substantial persons—Attesting witnesses.*—With reference to ... nary sense,—*i e*, men who have some stake in the community, men of local influence or importance and respectability,—and not be taken to mean simply men who can readily be found. GOPAL KISHORE SHOOR v MUDUN MOHUN HOLDAR [2 W. R., 188

MOHINEE DOSSEE v JUGGODUMBA DOSSEE [W. R., 1864, 383

151. ——————— "*Substantial persons*"—*Service of notice*—The provisions of cl 2, s. 8, Reg VIII of 1819, with regard to the notification of the sale of a patni talukh for the ...

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

living and well known in the neighbourhood, may properly be considered a " substantial person " within the meaning of cl 2, s 8 of the Regulation. It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man from whom damages could be recovered

S. C. RAM SABUK BOSE *v.* MONMOHINEE DOSSEE [L R., 2 I. A., 71: 23 W. R., 113

152. ———— *Substantial persons—Suit to set aside sale for irregularity—Non-service of notices—Omission to tender rent.*—In a

under s 8, cl. 2, the objection in order to succeed must be one of substance and not merely of form.

such as are ment, persor *e.g.*, ameens PANDA *v.* DA PANDA

153. ———— Service of notice of sale—*Beng. Reg. VIII of 1819, s 8, cl. 2—Non-service of notice, Effect of, on sale*—Where a Court finds that the notice prescribed in cl. 2, s 8, Regulation VIII of 1819, has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with those directions does not vitiate a sale under the Regulation, provided notice is duly served. SONA BEEBEE *v* LALL CHAND CHOWDHRY . . 9 W. R., 242

154. ———— *Proof of service—Onus probandi—Evidence Act, s. 106.*—In a

service lies on the defendant, according to the spirit of s. 106 of the Evidence Act. DOORGA CHURN SURMA CHOWDHRY *v* NAJUNOODDEEN 21 W. R., 397

155. ———— *Proof of service—Beng Reg. VIII of 1819, s 8, cl 2—Publication*—Although the provisions of s. 8, cl. 2, of Regulation VIII of 1819, specifying the manner in which proof should be given

same clause and section of the Regulation BHUGWAN CHUNDER DASS *v* SUDDER ALLY [I. L. R., 4 Calc., 41: 2 C. L. R., 357

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

156. ———— *Beng. Reg. VIII of 1819, s. 8, cl. 2—Proof of publication of notice before sale of patni talukh for arrears of rent*

responsible for such publication being regularly

MAHARAJAH OF BURDWAN *v.* TARASUNDARI DEBI [I. L. R., 9 Calc., 619: 13 C. L. R., 34 L. R., 10 I. A., 19

157. ———— *Proof of publication of notice—Beng. Reg VIII of 1819, s 8—Irregularity in sale—Suit to set aside sale.*—It is essential to the validity of a sale, held under Regulation VIII of 1819, of a patni estate for arrears of rent that the notices of sale

HARANATH GUPTA *v* JAGANNATH ROY CHOWDHRY . . 9 B. L. R., 89 note: 11 W. R., 87

And as to what amounts to publication of notice. RAGHAB CHANDRA BANERJEE *v.* BRAJANATH KUNDU CHOWDHRY [9 B. L. R., 91 note: 14 W. R., 489

158. ———— *Beng. Reg. VIII of 1819, s. 8, cl. 2—Formalities prescribed in that section*

In ca is in to the Regul *Maharajah of Burdwan* v. *Tarasundari Debi, I. L. R., 9 Calc, 619. L. R., 10 I. A., 19,* and *Maharani of Burdwan* v. *Krishna Kamini Dasi, I. L. R., 14 Calc, 365. L. R., 14 I. A., 20,* referred to. *Sona Beebee* v. *Lallchand Chowdhry, 9 W. R., 242,* explained. BEJOY CHAND MAHATAB *v.* AMRITA LAL MUKERJEE . I. L. R., 27 Calc., 308

159. ———— *Ground for setting aside sale—Non-service of notice.*—The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of

SALE FOR ARREARS OF RENT —*continued.*

II. SETTING ASIDE SALE—*continued.*

rent. Nugendro Chunder Ghose *v.* Musruff Bibee . . . . . 15 W. R., 17

Tara Chand Biswas *v.* Ram Jeebun Moostafee [22 W. R., 202

160. —— *Beng. Reg. VIII of 1819, s. 8—Notice of sale, Publication of.*—In a case of a sale under Regulation VIII of 1819, where the patni was a small piece of land, upon which there was no town or village or cutchery of any kind, and the peon stuck up the notice in the [illegible] of [illegible] de- [illegible] ave [illegible] the provisions of the law regarding notice. Hurry Kristo Roy *v.* Motee Lall Nunder [14 W. R., 38

161. —— *Beng. Reg. VIII of 1819.*—It was held to be a far more exact compliance with the spirit of Regulation VIII of [illegible] [20 W. R., 102

162. —— *Beng. Reg. VIII of 1819, s. 8.*—In the case of a sale of a patni [illegible] at [illegible] gu- [illegible] ad- [illegible]

163. —— *Beng. Reg. VIII of 1819, s. 8—Due publication of notice of sale.*—Where there is a cutchery upon the land of a defaulting patnidar, the notice required by s. 8 of Regulation VIII of 1819 must be served there, but where there is no such cutchery, the notice should be publ[illegible] at the [illegible] Mahar[illegible]

[illegible] sale proceedings and also to advertise the sale to [illegible]

[illegible] apply to the tenure in question must be published at

SALE FOR ARREARS OF RENT —*continued.*

II. SETTING ASIDE SALE—*continued.*

[illegible] dar under the Regulation, had caused to be stuck up the requisite petition and notice at the Collector's [illegible]

[illegible] sufficient plea within the meaning of the Regulation Maharani of Burdwan *v.* Krishna Kamini Dasi . . . . . I. L. R., 14 Calc., 365

Maharani of Burdwan v. Mirtunjoy Singh [L. R., 14 I. A., 13

See Ahsanulla Khan Bahadoor *v.* Hurri Churn Mozoomdar . I. L. R., 17 Calc., 474

164. —— *Insufficient* [illegible]

[illegible] -le, [illegible]

s. 14 for setting aside the sale. *Bykantha Nath* [illegible]

165. —— *Publication of notice of* [illegible] *VIII of* [illegible] VIII of [illegible] under th[illegible] cutchery [illegible] serving the notice upon the zamindar himself or his

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

agent. The object of the Regulation is to make known to the holders of under-tenures and raiyats

HURRY MAITY . . I. L. R., 9 Calc., 172

166. ——— ——— Beng. Reg. VIII of 1819, s. 8—*Publication of proof of service—Suit to set aside sale.*—Compliance with the directions in Regulation VIII of 1819 as to service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his cutchery,—*Held* that this was not sufficient, and that the sale must be set aside. *Maharajah of Burdwan* v. *Tarasundari Debi, L. R., 10 I. A., 19 : I. L. R., 9 Calc., 619,* and *Maharajah of Burdwan* v. *Kristo Kamini Dasi, I. L. R., 9 Calc., 931,* followed. MAHOMED ZAMIR *v.* ABDOOL HAKIM . I. L. R., 12 Calc., 67

167. ——— ——— *Patni tenure—Beng. Reg. VIII of 1819, s. 8, cl. 2, and s. 14—Date of publication of notice.*—The fact that the receipt of the notice of sale was dated the 15th of Bysack, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of s. 8, cl. 2, of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a patni tenure for arrears of rent. There being nothing in

168. ——— ——— *Beng. Reg. VIII of 1819, s. 8—Benami purchase—Validity of sale.*—*A* and *B* were co-sharers of a patni which was sold

having been published, that the sale must be considered

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

Chand Chowdhry, 1 W. R., 242, and *Koylash Chunder Banerjee* v. *Kali Prosunno Chowdhry, 16 W. R., 80,* cited and followed. JOTENDRO MOHUN TAGORE *v.* DEBENDRO MONEE . 2 C. L. R., 419

169. ——— ——— Beng. Reg. VIII of 1819, cl. 3, ss. 8, 14—*Patni sale—Notices. Publication of—Ostum sale.*—It is imperative that the notices referred to in cl. 3, s. 8 of Regulation VIII of 1819, be published previously to the 15th Kartick. Non compliance with such direction is a "sufficient plea" within the meaning of s. 14 of the Regulation for reversal of a sale held thereunder. *Matungee Churn Mitter* v. *Moorrary Churn Ghose, I. L. R., 1 Calc., 175 : 24 W. R., 453,* dissented from. SURNOMOYI DEBIA *v.* GRISH CHUNDER MOITRA . . . I. L. R., 18 Calc., 363

170. ——— ——— Beng. Reg. VIII of 1819, s. 8—*Service and publication of notice of sale—Irregularities in preliminaries to sale—Petition for sale—Certificate of Munsif when service is sworn to before him—Form of notice of sale in mid-year sales for six months' arrears.*—All the requirements in cl. 2, s. 8 of Regulation VIII of 1819, must be imported into cl. 3 of that section *mutatis mutandis.* Where therefore the zamindar is proceeding under cl. 3 to

of three-fourths of such balance. In such a case a notice which stated that the sale would take place unless the whole of the balance was paid as if the zamindar was proceeding under cl. 2 for the whole year's arrears was held to be a bad notice, and a

sale for arrears of rent; non-compliance with that provision therefore is not a ground for setting aside the sale. For the same reason, the non-presentation of the petition on the precise day (1st Kartick)

by the village people to attest the publication of the notice of sale, mean a certificate to the effect

SALE FOR ARREARS OF RENT —*continued*.

11. SETTING ASIDE SALE—*continued*.

that the peon did come before the Munsif or police-officer, as the case may be, and did make voluntary oath as to the service of the notice Where the peon, after serving the notice, made an affidavit as to the mode of service, and took the affidavit before the Munsif, to whom it was read and who then

Held by the Privy Council affirming this decision:—The power of sale given to the zamindar by Regulation VIII of 1819, upon default in payment of the rent by a patnidar is only exercisable sub-

way to stay the sale. This objection was taken for the first time in the Appellate Court. *Held* that, as a defect fatal to the whole proceedings appeared in the notice, the objection was compe-

[I L. R, 20 Calc, 86
L. R., 19 I. A., 191

171. ——————— *Beng Reg VIII of 1819, s. 8—Notice, Publication of*

[2 C. W. N., 461

172. ——————— *Beng. Reg. VIII of 1819, s. 8, cl. 2—Onus of proof of publication of notice before sale of patni talukh*

SALE FOR ARREARS OF RENT —*continued*.

11. SETTING ASIDE SALE—*continued*.

sub section to be stuck up in some conspicuous part of the Collector's cutchery had been published,—*Held* that the plaintiff was entitled to a decree setting aside the sale. HURRO DOYAL ROY CHOWDHRY *v*. MAHOMED GAZI CHOWDHRY

[I. L. R., 19 Calc., 699

173. ——————— *Beng Reg VIII of 1819, ss. 8, 14, cl. 2—Publication of*

a sale of a patni tenure under that Regulation Where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's cutchery as required by law, was in accordance with the practice which prevailed during the incumbency of the Nazir of the Collector's cutchery at Birbhum and of his predecessors in office, kept by the Nazir with other petitions for sale and notices relating to them in a bundle, which was at night locked up for safe custody, and in the day time kept in a conspicuous place near his seat at the entrance to the cutchery, any person who chose to ask for it or wished to see it being at liberty to inspect the whole bundle,—*Held* [by PETHERAM, C J, and GHOSE, J. (TOTTENHAM, J., dissenting)] that this was not a publication of the notice within the meaning of cl. 2 of s 8 of the Regulation and that it was a 'sufficient plea' for the defaulting patnidars within the meaning of s 14 to have the sale set aside. *Maharaja of Burdwan* v *Tarasundari Debi, I. L. R., 9 Calc., 619 L. R., 10 I A, 19,* relied on. *Ahsanalla Khan Bahadur* v *Hurri Churn Mozoomdar, I. L. R, 17 Calc, 474,* distinguished RAJNARAIN MITRA *v* ANANTA LAL MONDUL. KRISTO LAL CHOWDHURI *v*. ANANTA LAL MONDUL . I. L R, 19 Calc, 703

174 — — *Act X of 1859 —Non-attachment and non-publication of sale proclamation—Civil Procedure Code (Act XIV of 1852), s 311*—There is no provision in Act X of 1859 under which the sale of a jote in execution of a rent decree is liable to be set aside on the ground of non-attachment and non-proof of publication of the sale proclamation PATIT SHAHU *v* HARI MAHANTI

[I. L. R., 27 Calc., 789

175. ——————— *Sale after due and proper notice set aside as irregularly conducted —Second sale without fresh notice—Suit to set aside second sale—Madras Rent Recovery Act (Mad Act VIII of 1865), ss. 19, 39, and 40.*— A landlord attached his tenant's holding for arrears

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

of rent in 1889, and within the time prescribed by the Madras Rent Recovery Act, s 18, put in an application for sale to the Collector and otherwise complied with the procedure prescribed by the Act. The land was sold, but the sale was set aside as having been irregularly conducted. [illegible] sale set aside. *Held* that a fresh notice was not necessary, and that the plaintiff was not entitled to have the sale set aside. OLIVER *v.* ANANTHARAMAYYAR . . . I. L. R., 20 Mad., 498

(c) OTHER GROUNDS.

176. ——— **Unregistered proprietor's right to sue to set aside sale**—*Patni talukh—Transfer of patni—Registered transferee—Beng. Reg. VIII of 1819, s. 14.*—Where a patni talukh has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of s. 14 of the same Regulation. CHUNDER PERSHAD ROY *v.* SHUVADRA KUMARI SHAHEBA [I. L. R., 12 Calc., 622

177. ——— *Beng. Reg VIII of 1819, ss. 3, 5, 6, 14—Sale of patni tenure—Registered patnidars—Suit by unregistered patnidars*—An unregistered proprietor of a patni tenure is entitled to sue to set aside a sale held under Regulation VIII of 1819 *Chunder Pershad Roy v. Shuvadra Kumari Shaheba, I. L. R., 12 Calc., 622,* followed JOYKRISHNA MUKHOPADHYA *v.* SARFANNESSA . . . . I. L. R, 15 Calc., 345

178. ——— **Fraud**—*Suit to set aside sale—Beng. Act VIII of 1865—Right of purchaser.*—[illegible] fraud. DAMUDAR ROY *v.* NIMANUND CHUCKERBUTTY [7 B. L. R., Ap., 1: 15 W. R., 365

179 ——— *Collusion—Suit by tenant against purchaser to set aside sale.*—Where a tenure had been sold under s. 105, Act X of 1859, in execution of a decree for the rent of land held under a mirasi pottah, a tenant in possession was at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises BORRADAILE *v.* GREGORY . 2 W. R., Act X, 63

180 ——— *Beng. Reg. VIII of 1819—Invalid sale*—A patni talukh being about to be brought to sale under Regulation VIII of 1819, the agent of the sharers were in attendance at the Collectorate on the day of sale, prepared to pay the rent due. Two of the agents (*T* and *B*) happening to be out of the way at the time, the lot was about to be called up. The third *K*, without informing the Collector or zamindar's agent of their intention to pay, or giving notice to the others, purchased the patni. *Held* that *K*'s act was one of bad faith, and that the 4 annas shareholders whom he represented could not in equity be allowed to benefit by adopting the fraud. *Held* also that, as between the Collector and zamindar and the defaulting patnidars, the sale was valid; but that it was void so far as it created a title in favour of the 4 annas share holders to the 12 annas share, and *K* must be treated as having made the purchase on account of, and as a trustee for, the 12 annas shareholders. KOYLASH CHUNDER BANERJEE *v.* KALEE PROSUNNO CHOWDHRY . . . . . 18 W. R., 80

181. ——— *Collusion—Invalid sale—Reconveyance of share sold.*—Where the sale of a tenure for arrears of rent was brought about by collusion between the party in whose name it stood and the purchaser, with a view to get rid of a co-sharer, who had neglected to have his share transferred to his name,—*Held* that the transaction was a private one, and not really an auction sale for the purpose of realizing the zamindar's rent, and that on payment of his share of the rent the above sharer was entitled to have his share reconveyed to him. KISHORE CHUNDER SEIN *v.* KALLY KINKUR PAUL CHOWDHRY . . . 20 W. R., 333

See SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA . . . . 14 W. R., 158

SIDHEE NUZUR ALLY KHAN *v.* OJOODHYARAM KHAN . . . 10 Moore's I. A., 540 [5 W. R., P. C, 83

182. ——— *Collusion—Beng. Reg. VIII of 1819—Sale where no arrears are due.*—*Per* AINSLIE, J.—It can only be on the [illegible]

183. ——— *Beng. Reg. VIII of 1819—Invalidity of sale—Sale where no* [illegible] CHUNDER BHOOMICK *v.* PERTAB CHUNDER SINGH [7 W. R., 219

184. ——— **Sale after arrears have been paid**—*Suit to set aside sale—Deposit of rent in Collector's treasury.*—An estate was sold under cl. 2, s. 8, Regulation VIII of 1819, for arrears of rent due by a patnidar to the zamindar. Prior to the date of sale, the amount due was paid by the patnidar to an accountant in the Collector's Office, as in satisfaction of arrears, but no notice was given to the zamindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. *Held per* NORMAN and MACPHERSON,

SALE FOR ARREARS OF RENT —*continued.*

II. SETTING ASIDE SALE—*continued.*

JJ., that the suit could not be maintained. *Per* MITTER, *J.*—If the custom of the Collectorate was, as alleged by the plaintiff, for payments in satisfaction so to be made to the Collector's accountant, the sale ought to be set aside. KRISHNA MOHAN SHAHA *v.* ATTABUDDIN MAHOMED

[8 B. L. R., 134 : 15 W. R., 560

185. ———— *Sale by zamindar with notice (though irregularly served) that arrears of rent have been deposited.*—Where a zamindar puts up a patni for sale, under Regulation VIII of 1819, knowing that the rent due to him has been paid into Court by the patnidar, the sale is invalid, even if the notice served on the zamindar was illegally served. TARA SOONDUREE DEBIA *v.* RADHA SOONDUR ROY . . . 24 W. R., 63

[illegible]

rightly brought against *G*, who was the registered tenant; and the arrears being actually due and the sale a *bonâ fide* one, such sale was valid and binding as against the plaintiff. FATIMA KHATUN *v.* COLLECTOR OF TIPPERAH

[8 B. L. R., 4 note : 13 W. R., 433

187. ———— Sale of an under-tenure in execution of decree for arrears of rent—*Act VIII of 1865—Sale under three separate decrees each against one of three joint brothers—Execution issued only against one—Joint interest of three brothers in joint possession sold*—A zamindar brought to a judicial sale an under tenure in execution of three *ex-parte* decrees obtained by him for arrears of rent thereof for different periods The property was held by three Hindu brothers in joint possession. The zamindar purchased it at the sale At the instance of the zamindar, execution had been issued against only one of the brothers. Another of them, referring to this, afterwards disputed the validity of the sale and claimed his one-third share, alleging, as the fact was, that the decrees had not, each and all of them, been against each and all of the three brothers, and that the sale was invalid One at least of the three decrees was against the three brothers, who all understood that they were judgment-debtors under the decrees. They had been served with proper notices under Act VIII of 1865, and separate attachments of the land under each decree, and separate proclamations of sale thereunder had been made *Held* that the sale was a valid one, and operated to transfer the tenure to the purchaser. TARA LAL SINGH *v.* SAROBAR SINGH

[I. L. R., 27 Calc., 407
L. R., 27 I. A., 33
4 C. W. N., 533

188. ———— Decree for sale set aside on review—*Bonâ fide purchaser—Suit to set aside sale*—*A* purchased a share of *B*'s talukh at an auction-sale in execution of an *ex-parte* decree obtained [illegible]

fide. JAN ALI *v.* JAN ALI CHOWDHRY

[1 B. L. R., A. C., 56 : 10 W. R., 154

189. ———— Decree for sale set aside for fraud—*Suit to set aside sale.*—In a suit to [illegible]

KISHORE BANERJEE *v.* ABHAYA CHARAN SARMA

[1 B. L. R., A. C., 84

MOHESH CHUNDER BAGCHEE *v.* DWARKANATH MOITRO . . . 24 W. R., 260

190 ———— Sale while warrant is in force against moveable property—*Beng. Act VIII of 1869, s. 61—Irregularity in sale—Suit to set aside sale for irregularity.*—Under s. 61 of Bengal Act VIII of 1869, a sale for arrears of rent, while a warrant against the moveable property of the debtor is still in force, is not merely irregular, but void. A suit will lie to set aside an auction sale for arrears of rent where the decree-holder himself be- [illegible] ing full opportunity of so doing, has neglected to do so UJOLLA DASI *v.* DHIRAJ MAHATAB CHAND

[7 C. L. R., 215

191. ———— Want of material injury—*Beng. Reg. VIII of 1819.*—A purchaser under a sale for arrears of rent is not entitled to have the purchase set aside on the ground merely of an irregularity in sticking up the preliminary advertisement, unless he can show that he has been prejudiced thereby JOYNUB BEBEE *v.* AHAMED [illegible]

[Marsh., 21 : 1 Hay, [illegible]]

192. —— Want of [illegible] arrears—*Suit to set aside sale*—[illegible]

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. DOORGA PERSHAD PAL CHOWDHRY *v.* JOGESH PROKASH GONGOPADHYA . . . 4 W. R., Act X, 38

193. ——— Want of notice of sale—*Bonâ fide purchaser.*—If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bonâ fides* of the purchaser. MOBARUCK ALI *v.* AMEER ALI 21 W. R., 252

194. ——— *Unregistered tenant—Purchaser—Suit to set aside sale.*—The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. DHUNPUT SINGH ROY *v.* VILLAYET ALI [13 B. L. R., 153 note. 15 W. R., 211

Also BHOBO TARINEE DOSSEE *v.* PROSONNOMOYE DOSSEE . . . 13 B. L. R., 150 note

GOSSAIN MUNGUL DOSS *v.* ROY DHUNPUT SINGH [25 W. R., 152

195. ——— *Beng. Reg. VIII of 1819, s. 14—Patni sale—Se-patni interest—Onus* [illegible] *of 1819.*— [illegible] patni right [illegible] ıder Bengal [illegible] sed by the [illegible] tnidars of a portion of the lands let out in patni, were, after the [illegible]

196. ——— Vagueness of specification and notice of sale—*Act X of 1859, s. 104.*—Want of clearness in the specification of the arrears and costs for which a sale takes place, or in the mode in which the notice is published, is not an irregularity vitiating a sale for arrears of rent if fraud is absent. MAHOMED AYENOODDEEN *v.* KALEE DOSS CHUNDO [15 W. R., 279

197. ——— Absence of one shareholder's name from proceedings—*Irregularity affecting validity of sale.*—Where a tenure was duly sold for arrears of rent under Act X of 1859 and Bengal Act VIII of 1865, the absence of a shareholder's name from the proceedings did not, as a matter of law invalidate the sale as against him. DOORBIJOY MAHTOON *v.* PRITHEE NARAIN SINGH [14 W. R., 30

198. ——— Fixing date of sale—*Era—Custom—Uniformity of practice.*—As regards the date fixed for sale and the era to be followed, the intention of the Regulation was to lay down a uniform practice in each locality. Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . 24 W. R., 129

199. ——— *Era—Error in advertisement of date.*—According to Regulation [illegible]

stated [illegible]
May [illegible]
Sunda [illegible]
Satur [illegible]
illegal, in consequence of its not having taken place on the 5th Jeyt, or any subsequent date to which it might have been adjourned after due notice. BECHARAM MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE . . . . . W. R., 1864, 4

200. ——— Change of date of sale—*Sale not for full arrears—Fraud—Suit to set aside sale.*—In a suit to set aside a sale for arrears of rent due up to Aughran 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it [illegible]

[illegible] W. R., 400

201. ——— Postponement of sale—*Discretion of Court.*—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, *i.e.*, that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. JANOKEENATH MOOKERJEE *v.* RADHA MOHUN CHATTERJEE . . 20 W. R., 130

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*concluded.*

202.——————————*Mad. Act VIII of 1865 (Rent Recovery Act), s. 83—Adjournment for want of bidders to next day—Duty of officer conducting sale.*—A sale of land for arrears of rent under the provisions of the Rent Recovery Act

SIVALINGA . . . . I. L. R., 8 Mad., 6

203.———— Inadequacy of price—*Ground for setting aside sale.*—Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the patni law. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE 21 W. R., 369

204.———— Irregularity not caused by act or omission of decree holder—*Act X of 1859, s. 104—Damages.*—S. 104, Act X of 1859, does not enact that the decree-holder is to pay damages whenever it may be found that there has been an irregularity in publishing the sale processes, wholly irrespective of the question whether such irregularity was caused by his acts or omissions. RAMCHUNDER SURMAH CHUCKERBUTTY *v.* KALEE CHUNDER SINGH [7 W. R., 307

205.———— Omission to tender before sale—*Inclusion of irrecoverable charges.*—Where there is no tender before sale of the amount of rent due, a sale under Regulation VIII of 1819 cannot be set aside merely because some charges were included which might not strictly be recoverable under the Regulation, where the zamindar in his petition clearly distinguished the amount due for rent from such charges PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBER PANDA . 24 W. R., 129

12. EFFECT OF SETTING ASIDE SALE.

206.———— Recovery of purchase-money —*Decree for purchase-money—Execution—Fresh suit—Interest on deposit.*—In a suit to set aside the sale of a patni tenure, where a purchaser is made a co-defendant under s 14, Regulation VIII of 1819, and it is decreed that the purchaser may recover the purchase-money from the zamindar defendant,—*Held* that the purchaser may proceed in execution without a fresh suit If the purchase-money of a patni is in deposit in the Collectorate, and the zamindar, judgment-debtor, fails to assist the judgment-creditor in recovering his dues, he is liable for interest on the entire sum. PREOLALL GOSSAIN *v.* GYAN TURUNGINEE DOSSIA . . . 13 W. R., 161

207.—————————— *Sale where no patni tenure exists — Held* by JACKSON, J. (MOOKERJEE, J., *dubitante*), that a zamindar who puts up for sale a patni under Regulation VIII of 1819, guarantees to the purchaser that there are some lands appertaining to the patni, and if it turns out that there are no such lands (that there is in fact no such patni), the purchaser will be entitled to recover his purchase-money. KHELUT CHUNDER GHOSE *v.* KISHEN GOBIND DEB . . . 16 W. R., 128

SALE FOR ARREARS OF RENT —*continued.*

12. EFFECT OF SETTING ASIDE SALE —*continued.*

208 ———— Refund of bonus paid to purchaser on his purchase—*Lease, Construction of—Landlord and tenant—Failure of consideration—Sale subsequently set aside.*—The defendants, after purchasing a patni talukh at an auction sale for arrears of rent under Regulation VIII of 1819, granted a dar-patni lease to the plaintiffs (the former dar-patnidars) and received a bonus of R1,199 The auction-sale being five years afterwards set aside,—*Held* that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as darpatnidars under the former patnidar. TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY

[I. L. R., 4 Calc., 778: 4 C. L. R., 20

209. ———— Indemnification for payments of rent while sale existed—*Beng Reg. VIII of 1819, s. 14, cl. 1.*—Where a zamindar sells a patni tenure for arrears of rent and the sale is afterwards set aside, the purchaser can, under Regulation VIII of 1819, s 14, cl. 1, require the Court to compel the zamindar to indemnify him on account of all payments of rent which he may have made, and if he does not do so, he cannot set up his loss in answer to a liability which he has incurred. TARACHAND BISWAS *v.* NAFAR ALI BISWAS

[1 C. L. R., 236

210. ———— Position of holder of

purchaser or any assignee of the purchaser at such sale, and he can do so notwithstanding that he himself took a dar-patni, including the land he had held as chabar-patnidar, from the purchaser at such sale, and that this dar-patni was afterwards sold in execution of a decree against himself, and purchased at such last-mentioned sale by the person whom he seeks to evict on the strength of his original title SREENARAIN BAGCHEE *v.* SMITH

[I. L. R., 4 Calc., 807: 4 C. L. R., 148

211. ———— Order for refund of purchase-money—*Beng Reg VIII of 1819—Notice of sale—Setting aside sale—Refund of purchase-money.*—If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside, notwithstanding the *bona fides* of the purchaser Where such a sale was so set aside and the lower Appellate Court refused to make an order for refund of the purchase-money, the High Court in special appeal, and with reference to s 14, cl. 1, of the

SALE FOR ARREARS OF RENT —*concluded.*

12. EFFECT OF SETTING ASIDE SALE —*concluded.*

Regulation, declared the purchaser entitled to a refund with interest. MOBARUCK ALI *v.* AMEER ALI . . . . 21 W. R., 252

312. ——— **Rights of auction-purchaser on sale being set aside**—*Interest on purchase-money—Beng. Reg. VIII of 1819, s. 14.*—Under s. 14 of Regulation VIII of 1819, when a patni sale is set aside, the auction-purchaser is entitled to get back the purchase-money with interest. BEJOY CHAND MAHATAB *v.* AMRITA LAL MUKERJEE . . . I. L. R., 37 Calc., 308

SALE FOR ARREARS OF REVENUE.

See ACT XI OF 1859, s. 5.
[12 B. L. R., 297
I. L. R., 18 Calc., 208

See CASES UNDER BENAMI TRANSACTION —CERTIFIED PURCHASERS—ACTS XII OF 1841, I OF 1845, AND XI OF 1859.

See BOMBAY LAND REVENUE ACT, s. 56.
[I. L. R., 15 Bom., 67

See CASES UNDER MADRAS REVENUE RECOVERY ACT.

See RIGHT OF SUIT—REVENUE, SALE FOR ARREARS OF.

——— **Suit to set aside**—

See CO-SHARERS—SUIT BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION . 7 B. L. R., Ap., 42

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 133

SALE FOR ARREARS OF REVENUE —*continued.*

1. RIGHT TO SELL.

1. ——— **Right of Government.**—Whenever the land revenue is in arrear, Government is entitled to sell the land and to realize its due, whoever is the defaulter. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN
[I. L. R., 5 Bom., 73

2. ——— *Arrears—Beng. Regs. XIV of 1793 and VII of 1799—Beng. Reg. V of 1812.*—By Regulations XIV of 1793 and VII of 1799 the Governor General in Council may order a sale for arrears of a monthly instalment of revenue before the close of the year: but in order to warrant that Act, there must be an arrear of a previous year or of a monthly instalment. The existence of a written engagement or kistbandi is not a condition precedent to the right to enforce the payment of the revenue by monthly instalments, provided the monthly instalments be fixed and determined. By Regulation V of 1812, if there be an arrear of the annual assessment, or of a [illegible]

estate of the defaulting zamindar to be sold. When the monthly instalments are fixed and determined, the Government does not forego the right of selling the zamindari on default being made in payment of these instalments, by taking a bond from sureties by which the estates of the sureties also were rendered liable for the payment. KIST CHUNDER ROY *v.* GOVERNMENT
[5 W. R., P. C., 41 : 1 Moore's I. A., 333

2. PROTECTED TENURES.

3. ——— **Act XI of 1859, s. 37**—*Power of purchaser to avoid incumbrances—Right of occupancy.*—The title of a purchaser [illegible] for arrears of Government revenue, to [illegible] tenure and eject the tenant, will [illegible] whether the tenure is protected und[illegible] clauses of s. 37 of Act XI of 1859, a[illegible] tenant has a right of occupancy. If [illegible] prove such a right, he cannot be [illegible] s. 37. SHEO PERSHUN SINGH *v.* [illegible] KISHORE SING[illegible]

4. ——— [illegible] R[illegible] *...ers of purc[illegible] for arrea[illegible]* The rights [illegible] upon a sale for ar[illegible] e under s. 37, are [illegible] transfe[illegible] person, if th[illegible] immed[illegible] sale or withi[illegible] th[illegible] CHUNDER D[illegible]

5. ——— [illegible] R[illegible] *...chaser to a[illegible]* granted by a [illegible] duly register[illegible] tion of s. 37, [illegible] which the ow[illegible]

SALE FOR ARREARS OF REVENUE —*continued.*

2. PROTECTED TENURES—*continued.*

—*Held* that a revenue sale passes the right of avoiding it to the auction-purchaser. RAM CHUNDER CHUCKERBUTTY *v.* KASHINATH MOITRO

[W. R., 1864, 66

6. ———— *Suit by purchaser to avoid under-tenure—Beng. Act VIII of 1865, s. 16—Resident and hereditary cultivator.*—A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchasers of one of these estates at a sale for arrears of revenue and of a howla lease of the other at an auction-sale for arrears of rent, and brought a suit, in virtue of s. 37 of Act XI of 1859 and s. 16 of Bengal Act VIII of 1865, to avoid the tenures of the defendants, who held, in shikmi talukhdari and howladari tenure, lands appertaining to both estates. The defendants admitted the alleged

his death they themselves had continued to cultivate the land and reside upon it. The lower Courts having found that the defendants were hereditary and resident cultivators, it was held that the defendants were entitled to the benefit of the proviso in s. 16 of Bengal Act VIII of 1865, the words of that

7. ———— *Garden and homestead land with tanks.*—Where a party had occupied land for about forty years under a howla lease, and had made tanks, gardens, and homesteads, he was held to be protected under Act XI of 1859, s. 37. GRISH CHUNDER BANERJEE *v.* GUNGA DOORGA

[25 W. R., 60

8. ———— *Protection from effect of sale—Land planted as garden.*—A land-

9. ———— *Garden land—Under-tenure—Avoidance of tenure.*—Leases of lands which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made, are, under the provisions of Act XI of 1859, s. 37, cl. 4, protected from avoidance by a revenue auction-purchaser. GOBIND CHUNDRA SEN *v.* JOY CHUNDRA DASS . . . I. L. R., 12 Calc., 327

10. ———— *Permanent structures and improvements—Suit to avoid incumbrances.*—In a suit to avoid an under-tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the permanent settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that accordingly it was protected under exceptions 1 and 4 to s. 37 of Act XI of 1859; but the lower Court gave a decree to the plaintiffs and annulled the under tenure. *Held* by WHITE, J., that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding. BHAGO BIBEE *v.* RAM KANT ROY CHOWDRY

[I. L. R., 3 Calc., 293

11. ———— *Under-tenure-holders—Raiyats, Rights of—Improvements on*

constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier. AJGUR ALI *v.* ASMUT ALI

[I. L. R., 8 Calc., 110: 10 C. L. R., 87

12. ———— *Lease of tank without surrounding land.*—A lease of tank without

SALE FOR ARREARS OF RENT
—concluded.

12. EFFECT OF SETTING ASIDE SALE
—concluded.

Regulation, declared the purchaser entitled to a refund with interest. MOBARUCK ALI *v.* AMEER ALI . . . . . . 21 W. R., 252

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MUKERJEE . . . I. L. R., 27 Calc., 308

SALE FOR ARREARS OF REVENUE.

See ACT XI OF 1859, s. 5
[12 B. L. R., 297
I. L. R., 13 Calc., 208

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS—ACTS XII OF 1841, I OF 1845, AND XI OF 1859.

See BOMBAY LAND REVENUE ACT, s. 56.
[I. L. R., 15 Bom., 67

See CASES UNDER MADRAS REVENUE RECOVERY ACT.

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See CO-SHARERS—SUIT BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—POSSESSION . 7 B. L. R., Ap., 42

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135

SALE FOR ARREARS OF REVENUE
—continued.

1. RIGHT TO SELL.

1. ———— **Right of Government.**—Whenever the land revenue is in arrear, Government is entitled to sell the land and to realize its due, whoever is the defaulter. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN
[I. L. R., 5 Bom., 73

2. ———— *Arrears—Beng. Regs. XIV of 1793 and VII of 1799—Beng. Reg. V of 1812.*—By Regulations XIV of 1793 and VII of 1799 the Governor General in Council may order a sale for arrears of a monthly instalment of revenue before the close of the year. but in order to warrant that Act, there must be an arrear of a previous year or of a monthly instalment. The existence of a written engagement or kistbandi is not a condition precedent to the right to enforce the payment of the revenue by monthly instalments, provided the monthly instalments be fixed and determined. By Regulation V of 1812,

and the Board of Revenue may direct the whole estate of the defaulting zamindar to be sold. When the monthly instalments are fixed and determined, the Government does not forego the right of selling the zamind
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ROY *v.* GOVERNMENT
[6 W. R., P. C., 41 ; 1 Moore's I. A., 383

2. PROTECTED TENURES.

3. ———— **Act XI of 1859, s. 37**—*Power of purchaser to avoid incumbrances—Right of occupancy.*—The title of a purchaser at a sale for arrears of Government revenue, to void an under-tenure and eject the tenant, will depend upon whether the tenure is protected under any of the

4. ———— *Right of transferee of purchaser at sale for arrears of revenue*—The rights which are conferred upon a purchaser at a sale for arrears of revenue under Act XI of 1859, s. 37, are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter. KOYLASH CHUNDER DUTT *v.* JUBUR ALI . 22 W. R., 29

5. ———— *Right of purchaser to avoid under-tenure.*—When a patni granted by a Hindu widow, though in appearance a duly registered tenure falling within the 3rd exception of s. 37, Act XI of 1859, was in reality a fraud which the owner or reversioner might have avoided,

SALE FOR ARREARS OF REVENUE —*continued.*

2. PROTECTED TENURES—*continued.*

—*Held* that a revenue sale passes the right of avoiding it to the auction-purchaser. RAM CHUNDER CHUCKERBUTTY v. KASHINATH MOITRO [W. R., 1864, 66

6. ———————— *Suit by purchaser to avoid under-tenure—Beng. Act VIII of 1865, s. 16—Resident and hereditary cultivator.*—A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchasers of one of these estates at a sale for arrears of revenue and of a howla lease of the other at an auction-sale for arrears of rent, and brought a suit, in virtue of s. 37 of Act XI of 1859 and s. 16 of Bengal Act VIII of 1865, to avoid the tenures of the defendants, who held, in shikmi talukhdari and howladari tenure, lands appertaining to both estates. The defendants admitted the alleged nature of their holdings, but claimed exemption from eviction on the ground that their ancestor, more than twelve years before, had cleared and cultivated the land and built a house thereon, and that since his death they themselves had continued to cultivate the land and reside upon it. The lower Courts having found that the defendants were hereditary and resident cultivators, it was held that the defendants were entitled to the benefit of the proviso in s. 16 of Bengal Act VIII of 1865, the words of that proviso being wide enough to embrace every resident and hereditary cultivator irrespective of his denomination. MAHOMED ASSANOOLLAH CHOWDHRY v. SHANSHIR ALI . . . 4 C. L. R., 165

7. ———————— *Garden and homestead land with tanks.*—Where a party had occupied land for about forty years under a howla lease, and had made tanks, gardens, and homesteads, he was held to be protected under Act XI of 1859, s. 37. GRISH CHUNDER BANERJEE v. GUNGA DOORGA [25 W. R., 60

8. ———————— *Protection from effect of sale—Land planted as garden.*—A landlord cannot, by planting a garden in any portion of his estate, become, *quoad* such plantation, his own raiyat, so as to bring the land so planted under the protection of Act XI of 1859, s. 37, in the event of his estate being sold for arrears of revenue. BOOL CHAND JHA v. LUTHOO MOODEE . 23 W. R., 387

9. ———————— *Garden land—Under-tenure—Avoidance of tenure.*—Leases of

[illegible]

10. ———————— *Permanent structures and improvements—Suit to avoid incumbrances.*—In a suit to avoid an under-tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the permanent settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that accordingly it was protected under exceptions 1 and 4 to s. 37 of Act XI of 1859; but the lower Court gave a decree to the plaintiffs and annulled the under tenure. *Held* by WHITE, J., that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding. BHAGO BIBEE v. RAM KANT ROY CHOWDRY [I. L. R., 3 Calc., 293

11. ———————— *Under-tenure-holders—Raiyats, Rights of—Improvements on*

[illegible]

reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier. AJGUR ALI v. ASMUT ALI [I. L. R., 8 Calc., 110: 10 C. L. R., 87

12. ———————— *Lease of tank without*

any [illegible]

unde [illegible]

with [illegible]

whereon a tank has been excavated. *Ajgur Ali* v. *Asmut Ali, I. L. R., 8 Calc., 110,* referred to. ASMAT ALI v. HASMAT KHAN . 3 C. W. N., 412

13. ———————— *Ejectment—Dwelling-house, tanks, and trees.*—The plaintiffs, purchasers at a revenue sale, sought to eject the defendant from a piece of land measuring a little

[illegible]

must be a dwelling-house of a permanent character, and mere huts would not come within that description. That upon the findings no cause had been made out for exemption of any portion of the land. MAKAR ALI v. SHYAMA CHARAN DAS . . 3 C. W. N., 212

SALE FOR ARREARS OF REVENUE
—continued

2. PROTECTED TENURES—*concluded*.

14. ———————— s. 52—*Plantation.*—The plaintiff was the purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnahs for arrears of revenue, of an estate in the Sunderbunds in which the defendant was holder of a mokurari maurasi jungleburi tenure, under which he was to clear away the jungle and then to cultivate the land with paddy. In a suit after notice to quit to eject the defendant, and obtain possession of the land, or to have the defendant's tenure annulled,—*Held* that the defendant's tenure was not protected as being one of "lands whereon plantations have been made" within the meaning of s. 52 of Act XI of 1859 BHOLANATH BANDYOPADHYA *v.* UMACHURN BANDYOPADHYA. UMACHURN BANDYOPADHYA *v.* BHOLANATH BANDYOPADHYA
[I. L. R., 14 Calc., 440

3. SALE OF SHARE OF ESTATE.

15. ——— **Separation of estate**—*Act XI of 1859, ss 10, 11, and 37—"Shares" of an estate.*—The portion of an estate for which a separate account is opened under ss. 10 and 11 of Act XI of 1859, and the portion from which it is separated, are equally "shares" within the meaning of s 10

MONOHUR MOOKERJEE *v.* HUROMOHUN MOOKERJEE
[1 W. R., 27

16. ———————— *Act XI of 1859, s. 13—Application for separate account without order of Collector.*—S 13, Act XI of 1859, does not say that when an application has been made for a separate account, but when a Collector shall have ordered a separate account, that he is to put up to sale only the share in respect of which an arrear of revenue may be due. An order setting aside the sale as to the plaintiff's share therefore reversed on appeal RAJENDRO KISHORE NARAIN SINGH *v.* DOORGA KOONWAR . . . **7 W. R., 154**

17. ———————— *Act XI of 1859, s 11—Share of estate*—A sharer of a joint talukh, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under s. 11, Act XI of 1859, non-registry of the talukh as a shikmi talukh under that Act will not preclude any person thinking himself wronged by such registry from suing for the cancelment of the same. GOUR CHUNDER GOOPTO *v.* TARA MONEE . . . **6 W. R., 217**

18. ———————— *Act XI of 1859, s. 11—Separation of shares.*—The proprietors of a certain lot having obtained a separation of their

sold one village to *P*, who agreed to pay a certain

SALE FOR ARREARS OF REVENUE
—continued.

3. SALE OF SHARE OF ESTATE—*concluded.*

parties to the Civil Court under s. 12 *P* then brought a suit in the Civil Court for a separate account. *Held* that there was no legal objection to plaintiff having his separate share opened at the rate he mentioned, even if the jumma on the share which remained in *W*'s possession was excessive; for if the whole estate were put up to sale for arrears on account of t[illegible]
holders could [illegible]
the sum due.
KANAYE GHOSI

19. ———————— *Act XI of 1859, ss. 10, 11, and 13—Separation of shares—Suit by purchaser at private sale for possession of specific*

their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled as against them to have exclusive possession of any specific share GUNGADEEN MISSER *v.* KHEEROO MUNDUL . **14 B. L. R., 170 : 22 W. R., 449**

4. INCUMBRANCES.

(*a*) GENERALLY.

20. ——— **Limit of power to avoid incumbrances**—*Act XI of 1859, s. 11—Purchaser of entire estate.*—The power of a purchaser at a revenue sale to annul all incumbrances is limited to purchasers of entire estates. KALIDASS GHOSE *v.* CHANDRA MOHINI DASSI **8 W. R., 68**

MADHUB CHUNDER CHOWDHRY *v.* PROMOTHONATH ROY . . . **20 W. R., 234**

(*b*) ACT I OF 1845.

21. ——— **Object of act**—*Fraudulent purchaser—Sale by mortgagee.*—Act I of 1845 was not designed to protect a fraudulent purchaser as to the question whether a plaintiff could in point of law insist, notwithstanding an auction-sale for arrears of revenue, that as against him the sale ought to be viewed as a private sale. *Held* that, under the circumstances,—a fraudulent devise to bring about the same being alleged,—the sale must be considered a private sale. The exception that a fraudulent purchaser at an auction-sale by a mortgagee will not

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

defeat the equity of redemption, is an exception to the rule that a sale for arrears of revenue gives a title against all the world. SIDHEE NUZUR ALLY KHAN *v.* OJOODHYARAM KHAN

[10 Moore's I. A., 540 : 5 W. R., P. C., 83

22. ———— **Right to avoid incumbrances**—*Right of purchaser.—Quære.*—Whether the auction-purchaser under Act I of 1845, at a sale for arrears of revenue, was entitled to take free of all incumbrances created by the defaulting proprietor. JUGGODESHURY DOSSIA *v.* UMACHURN ROY

[7 W. R., 237

23. ———— *Right of auction-purchaser—Act I of 1845, s. 26*—An auction-purchaser of a zemindari at a sale for arrears of revenue [illegible]

RAJENDUR NARAIN ROY . . 2 Hay, 121

24. ———— *Agreement by former owner as to division of chur—Act I of 1845, s. 26*—A purchaser at a sale for arrears of Government revenue, suing to establish his right to chur lands which had accreted to the purchased estate, is not bound by an agreement entered into by the prior owner with the owners of the adjoining estate to divide the chur equally; such an agreement is an alienation of, or incumbrance on, the purchased estate, and therefore, under s. 26 of Act I of 1845, void as against the purchaser (*dissentiente* CAMPBELL, *J.*). But *per* NORMAN, *J.*, and CAMPBELL, *J.*, it would seem that purchasers under any of the sale laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner. BOYKUNTNATH CHATTERJEE *v.* AMEEROONISSA KHATOON . . . . . 2 W. R., 191

25. ———— *Act I of 1845, s. 26—Mokurari tenant in Benares, Right of.*—S. 26 of Act I of 1845, which enables auction-purchasers at sales for arrears of revenue to eject [illegible]

auction for arrears of revenue, a mokurari tenant in the province of Benares is entitled to receive a pottah at the fixed rent theretofore paid by him. MUNRO *v.* BALUCK SINGH

[1 N. W., 153 : Ed. 1873, 235

26. ———— *Act I of 1845, s. 26, cl. 3—Purchaser's right to evict—Khodkast kadimee raiyat.*—Possession as a khodikast kadmee raiyat having a right of occupancy (but not merely as a khodkast raiyat for twelve years) barred an auction-purchaser's right of eviction under cl 3, s. 26, Act I of 1845. LOTF ALI KHAN *v.* KASHEE DYAL

[1 W. R., 6

27. ———— *Act I of 1845, s. 26—Embankments.*—Embankments are not incumbrances liable to be extinguished under s 26, Act I of 1845, which refers only to tenures and leases COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE

[W. R., F. B., 17 : 1 Ind. Jur., O. S., 101

(c) BENGAL REGULATION XI OF 1822

28. ———— **Right to alter arrangements as to rent**—*Purchase by Government — Position of old proprietors.*—An estate having been sold for [illegible]

by Government with the present proprietors would [illegible]

[7 W. R., 180

29. ———— **Right to cancel talukhdari tenures**—*Settlement* [illegible]

plaintiffs as talukhdars Subsequently and after the terms for which they had re-settled with the plaintiffs had expired, the Government sold their zamindari rights to the defendant, who ejected the plaintiffs. In a suit to recover possession,—*Held* that it was the intention of Government to retain taukhdars in pos- [illegible]

or might not exercise), he must take some clear step to declare the avoidance or cancellation of the tenure. ASSANOOLLAH *v* OBHOY CHURN ROY

[13 W. R., P. C., 24 : 13 Moore's I. A., 317

30 ———— *Right of cancellation by Government as auction-purchaser—Exercise of power of cancellation*—Where the Privy

SALE FOR ARREARS OF REVENUE —*continued*

4. INCUMBRANCES—*continued.*

power of cancellation. *Held* also that the indulgence in that case referred mainly to tenures purchased between 1817 and 1822, but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction-sale for arrears of revenue. AFTABOODDEEN MAHOMED *v.* SANIOOLLAH. SANIAOLLAH *v.* AFTABOODDEEN MAHOMED [23 W. R., 245

cannot be taken for granted that the Government has enforced its extreme rights and even where the right of Government to do so is asserted in the course of the proceedings, it is a matter which has been decided upon evidence, whether, having asserted its right, the Government afterwards actually enforced it TRILOCHUN CHUCKERBUTTY *v* KOMOLA KANT CHUCKERBUTTY. KOMOLA KANT CHUCKERBUTTY *v.* NURRO SINGHO SINGH . 25 W. R., 536

32. ——— *Evidence of cancellation — Settlement — Right to eject incumbrancers.*—Where at an auction-sale for arrears of revenue the Government becomes the purchaser of the property, and afterwards makes a settlement with the former proprietors of the under-tenures, the

Council in the case of *Assanoollah* v *Obhoy Churn* ... 24, into which ... to be de-

... R., 13

See GOOROO PERSHAD CHUCKERBUTTY *v* BENI NATH CHUCKERBUTTY . . 2 C. L. R., 216

33. ——— Right of purchasers—*Tender of Government revenue by defaulter's mortgagee—Liability of Collector.*—The purchaser at a revenue sale, held in default of the payment of assessment, takes free of all incumbrances, although the revenue authorities, without otherwise depriving the defaulter

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

VAN ICHHARAM . . . . 11 Bom., 218

34. ——— Right of ejectment—*Beng. Reg. XI of 1822—Under-tenures—Right to impeach sale.*—The right to impeach a sale of lands for arrears of Government revenue extends not only to the

and an auction-purchaser takes the lands clear of all under-tenures At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their leases into possession. At the time of the sale the lands were subject to an istemrari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in conse-

and eventually the original proprietors upheld the lease to the Government lessees to a part of the lands called the Jungle Mehal for a term of years at a reduced rent. In a suit by the istemrari lessee for possession,—*Held* (reversing the decree of the Sudder Court) that by Bengal Regulation XI of 1822, s. 30, the istemrari lease was determined by the sale for Government arrears, and that the arrangement by which the lands were restored to the proprietors, subject to the rights of the Government lessees,

(d) ACT XI OF 1859.

35. ——— Lakhirajdars—*Beng. Reg. VII of 1822, s. 10, cls. 7 and 8—Arrangement by Commissioner for payment of revenue Payment by all*

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

as lakhirajdars could not be disturbed as long as

Affirmed on review, where it was held that a Commissioner's amulnama cannot destroy legal rights, even if no protest or objection be made. The order of a Commissioner requiring proprietors having separate jummas, to pay, for the convenience of the

his default. RAM GOBIND ROY *v.* KUSHUFFUDOZA [15 W. R., 141

36. ———— Right to annul incumbrances—*Encroachments by neighbouring estates.* —The principle under which purchasers of estates at revenue sales acquire such estates in the condition they were in at the permanent settlement, is equally recognized by the sale law (Act XI of 1859) as by the laws previous to it, and applies as much to actual encroachments on the talukh or estates by neighbours as to incumbrances or under-tenures created on it by the old proprietor or by his laches. GOLUCK MONEE DOSSEE *v.* HURO CHUNDER GHOSE [8 W. R., 62

37.————*Permanently-settled estate.*—An auction-purchaser at a revenue

tenures at the date of the permanent settlement must

undisturbed possession. FORBES *v.* MAHOMED HOSSEIN . 12 B. L. R., P. C., 210: 20 W. R., 44

38 ———— *Suit to annul under-tenures—Right to eject* —When an auction-purchaser at a sale for arrears of revenue creates a patni, he cannot sue to annul an under-tenure within that patni, as his whole power under Act XI of 1859

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

contains the tenure which is sought to be resumed. A patnidar, under such circumstances, though he may recover rent, is not entitled to eject an under-tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of thirty years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease SREEMUNT RAM DEY *v.* KOOKOOR CHAND . 15 W. R., 481

39. ———— *Land subject to*

entitled to the land free from any mortgage lien. ABDUL GANI *v.* KRISHNAJI BHIKAJI [10 Bom., 416

40. ———— Right acquired by purchaser—*Act XI of 1859, ss. 11, 13, 54 Sale of share of zamindari* —*A*, in exchange for his lakhiraj land, obtained in 1791 from his zamindar 441 bighas of mâl land, which zamindar thereupon created rent-free. The zamindar fell into arrears,

each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bighas, was sold under s 13, and purchased by the plaintiff, who now sued the descendants of *A* to recover possession. *Held* that a sale of a share of a zamindari under s 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zamindar, but he acquires the share, as laid down in s 54, subject to all incumbrances KASINATH KOOWAR *v.* BANKUBEHARI CHOWDHRY [3 B L. R., A. C., 446

S. C. KASHEENATH KOONWAR *v* BUNKO BEHAREE CHOWDHRY . . 12 W. R., 440

41. ———— *Act XI of 1859, s. 32—Right of purchaser to eject holders of howla and nim howla tenures* —Where certain howla and nim-howla tenures were never set aside by the Revenue Settlement or Revenue Commissioner's

SALE FOR ARREARS OF REVENUE
—*continued*

4. INCUMBRANCES—*continued.*

in that case referred mainly to tenures purchased between 1817 and 1822, but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction sale for arrears of revenue. AFTABOODDEEN MAHOMED *v.* SANIOOLLAH. SANIAOLLAH *v.* AFTABOODDEEN MAHOMED [23 W. R., 245

31. ——— Right of Government to annul tenures—*Evidence of cancellation—Presumption*—Though on the sale of a zamindari for arrears of revenue the Government has the right to annul all under-tenures not specially protected, yet it cannot be taken for granted that the Government has enforced its extreme rights and even where the

32 ——— *Evidence of cancellation — Settlement — Right to eject incumbrancers.*—Where at an auction-sale for arrears of revenue the Government becomes the purchaser of the property, and afterwards makes a settlement with the former proprietors of the under-tenures, the

cided. SHOOK DEB SHAHA *v.* ALLADI [2 C. L. R., 13

See GOOROO PERSHAD CHUCKERBUTTY *v.* BENI NATH CHUCKERBUTTY . . 2 C. L. R., 216

33. ——— Right of purchasers—*Tender of Government revenue by defaulter's mortgagee—Liability of Collector.*—The purchaser at a revenue sale, held in default of the payment of assessment, takes free of all incumbrances, although the revenue authorities, without otherwise depriving the defaulter of his right of occupancy, under s 36 of the Bombay Survey Act, I of 1865, have only sold his right, title, and interest. *Abdul Gani v. Krishnaji Bhikaji, 10 Bom., 416*, and *Gundo Shiddeshvar v. Mardan Saheb, 10 Bom., 419*, followed. The Collector may be responsible to the mortgagee of a revenue defaulter for refusing to accept the tender made by him of the Government rent, but if he does refuse it, and the land is sold, the title of the purchaser is unimpeachable. GHELABHAI BHIKARIDAS *v.* PRANJIVAN ICHHARAM . . . . 11 Bom., 218

34. ——— Right of ejectment—*Beng. Reg. XI of 1822—Under-tenures—Right to impeach sale.*—The right to impeach a sale of lands for arrears of Government revenue extends not only to the

and an auction-purchaser takes the lands clear of all under-tenures At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their leases into possession. At the time of the sale the lands were subject to an istemrari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in conse-

and eventually the original proprietors upheld the lease to the Government lessees to a part of the lands called the Jungle Mehal for a term of years at a reduced rent. In a suit by the istemrari lessee for possession.—*Held* (reversing the decree of the Sudder Court) that by Bengal Regulation XI of 1822, s. 30, the istemrari lease was determined by the sale for Government arrears, and that the arrangement by which the lands were restored to the proprietors, subject to the rights of the Government lessees, was in the nature of a compromise, and not such an unconditional restoration as amounted to a reversal of the sale, and the consequent revival of the istemrari lease. *Aliter.*—If a suit had been brought and a decree made for reversal of the sale. WATSON *v.* SREEMUNT LAL KHAN . 6 Moore's I. A., 447

(*d*) ACT XI OF 1859.

35. ——— Lakhirajdars—*Beng. Reg. VII of 1822, s. 10, cls. 7 and 8—Arrangement by Commissioner for payment of revenue Payment by all*

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

by all the proprietors, the defendants among them, was to be paid through the principal proprietor, and

settlement *Held* also (MARKBY, *J*, *dissentiente*) that cl. 8, s 10, Regulation VII of 1822, applied only to cases referred to in cl 7,—that is, of cultivating proprietors on pattidari or bhyachari tenure, or the like, and not to a case of this kind RAM GOBIND ROY *v.* KUSHUFFUDOZA . 14 W. R., 1

Affirmed on review, where it was held that a Commissioner's amulnama cannot destroy legal rights, even if no protest or objection be made. The order of a Commissioner requiring proprietors having separate jummas, to pay, for the convenience of the

[10 W. R., 141

36. ——— Right to annul incumbrances—*Encroachments by neighbouring estates* —The principle under which purchasers of estates at revenue sales acquire such estates in the condition they were in at the permanent settlement, is equally

MONEE DOSSEE *v.* HURO CHUNDER GHOSE [8 W. R., 62

37.——— *Permanently-settled estate.*—An auction-purchaser at a revenue

tenures at the date of the permanent settlement must be proved by their holders, the presumption in favour of a purchaser resting upon the principle that every bigha of land sold must contribute to the public revenue unless specially exempted. The tendency of

38 ——— *Suit to annul under-tenures—Right to eject* —When an auction-purchaser at a sale for arrears of revenue creates a patni, he cannot sue to annul an under-tenure within that patni, as his whole power under Act XI of 1859

passes to the patnidar, who alone can institute such a suit In such a case the patnidar's competency to

tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of thirty years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease SREEMUNT RAM DEY *v.* KOOKOOR CHAND . 15 W. R., 481

39. ——— *Land subject to mortgage* —Where land in the possession of a mort-

entitled to the land free from any mortgage lien. ABDUL GANI *v.* KRISHNAJI BHIKAJI [10 Bom., 416

40. ——— Right acquired by purchaser—*Act XI of 1859, ss. 11, 13, 54 Sale of share of zamindari* —*A*, in exchange for his lakhiraj land, obtained in 1791 from his zamindar 441 bighas of mâl land, which zamindar thereupon created rent-free. The zamindar fell into arrears, and the zamindari was sold Subsequently, three persons, who had become owners of the zamindari, applied to the Collector under s 11, Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bighas, was sold under s. 13, and purchased by the plaintiff, who now sued the descendants of *A* to recover possession. *Held* that a sale of a share of a zamindari under s 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zamindar, but he acquires the share, as laid down in s. 54, subject to all incumbrances. KASINATH KOOWAR *v.* BANKUBEHARI CHOWDHRY [3 B. L. R., A. C., 446

S. C. KASHEENATH KOONWAR *v.* BUNKO BEHAREE CHOWDHRY . . . . 12 W. R., 440

41. ——— *Act XI of 1859, s. 32—Right of purchaser to eject holders of howla and nim howla tenures* —Where certain howls and nim-howla tenures were never set aside by the Revenue Settlement or Revenue Commissioner's orders from the time they were recorded as existing rightful hereditary tenures of those classes at the first settlement,—*Held* that the purchaser of the ousut talukh could not eject the holders of those tenures under s. 32, Act XI of 1859, so long as they paid their jumma according to the settlement jummabundi. BURODA KANTH LAHA *v.* GOBIND CHUNDER

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

GOOHO. KALEE KINKUR ROY *v.* GOBIND CHUNDER GOOHO . . . . 7 W. R., 50

42. ——— *Act XI of 1859, s. 37—Incumbrances—Right of purchaser.*—A purchaser at a sale for arrears of revenue with a paramount title under s 37, Act XI of 1859, acquires the estate free from any incumbrance which accrued thereupon from the laches of former proprietors, in the same way as he would have acquired it free from any incumbrance created by sale, lease, or mortgage In the absence of any proof to the contrary, such purchaser must be assumed to be the owner. THAKOOR DASS ROY CHOWDHRY *v.* NUBEEN KISHEN GHOSE . . . . . 15 W. R., 552

43. ——— *Act XI of 1859, s. 37—Suit to cancel under-tenures—Right of purchasers.*—On the 13th January 1871 *A* and *B* purchased an estate sold for arrears of Government revenue. The original proprietors asserted their right to collect the rents of a portion of the property by virtu[illegible] tenu[illegible] in A [illegible] *C* [illegible] f[illegible] ...e original pro[illegible] *A* sued under [illegible] ...ry the tenures, making the original proprietors, *C* and various tenants, defendants *C* objected that *A* had no right of suit or cause of action, as he had parted with all his rights to *D* and *E*, and that, as his entire interest, in the estate was only 8 annas, he could not sue to cancel a part only of the sub-tenures *D* and *E* then applied to be made parties *Held* they could not sue, as they were not purchasers of an entire estate within s. 37, Act XI of 1859. Even on the [illegible] after the Government sale. *Sreemunt Ram Roy v. Kookoor Chand, 15 W. R., 481,* followed. DWARKANATH PAL *v.* GRISHCHUNDER BUNDOPADHYA

[I. L. R., 8 Calc., 827

44. ——— *Act XI of 1859, ss 37, 52—Sunderbund estate—District of which portion only is permanently settled—District, Meaning of—Beng. Reg. IX of 1816 and III of 1828—Estate—Beng Act VII of 1868.*—The plaintiff was the auction-purchaser at the sale under Act XI of 1859 by the Collector of the 24 Pergunnahs for arrears of revenue of the estate in the Sunderbunds on which the defendant was the holder of a [illegible] the register of revenue-paying estates in the Collectorate of the 24-Pergunnahs, and therefore within that Collectorate with regard to the provisions of Bengal Act VII of 1868, s. 10. The district of the [illegible] under an officer styled the Commissioner of the Sunderbunds, who is subject to the direct control of the Board of Revenue, and independent of the Col-[illegible] ...r notice [illegible] ...ssession [illegible] tenure [illegible] ...istrict" [illegible] of the [illegible] ...laintiff was the purchaser of an estate in a "permanently-settled district" within the meaning of s. 37 of Act [illegible] defendant's tenure was not protected as being one of "lands whereon plantations have been made" within the meaning of s. 52 of Act XI of 1859. *Held* further that, though there was no permanent settlement of the lands sold to the plaintiff, they fell within the definition of an "estate" as given in *Bengal Act VIII of 1868.* BHOLANATH BANDYOPADHYA *v.* UMACHURN BANDYOPADHYA. UMACHURN BANDYOPADHYA *v.* BHOLANATH BANDYOPADHYA

[I. L. R., 14 Calc., 440

45. ——— *Ejectment, Right of—Benami lease obtained by defaulting proprietor from purchaser at revenue sale, Effect of, on under-tenures—Act XI of 1859, ss. 37, 53.*—A mehal belonging to defendants Nos. 1 and 2 was brought to sale for arrears of Government revenue and purchased by defendant No. 6, from whom the plaintiff obtained a talukhdari pottah of a portion of the land comprised in the mehal. The plaintiff thereupon sued to eject defendant No. 4, who was in possession of the land under a lease which was found to have been granted previous to the revenue sale. In the suit it was found that the plaintiff obtained the talukhdari pottah as mere benamidar for defendant No. 1. *Held* that the provisions of s. 53 of Act XI of 1859 applied to the case, and that the plaintiff was not entitled to interfere with the tenancy of defendant No. 4 or eject him, and that the suit had been rightly dismissed. RASH BEHARI BOSE *v.* PURNA CHUNDER MOZUMDAR

[I. L. R., 15 Calc., 350

46. ——— *Act XI of 1859, ss. 37 and 53—Adverse possession—Limitation.*—The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

in 1886. He applied under Ch. X of the Bengal Tenancy Act for the measurement of the estate and

were granted not by any predecessor in title of the plaintiff, and were of a date anterior to the Permanent Settlement. *Held* that the adverse possession

possession therefore were sufficiently long, the suit would be barred by limitation The plaintiff could not be regarded as a person who had acquired the estate "free from all incumbrances which may have

[I. L. R., 22 Calc., 244

47. ——————— *Right of auction-purchasers to annul incumbrances—Act XI of 1859, s. 37—Suit to cancel under tenures—Parties.*—The

AKHIL CHANDRA CHOWDHRY *v.* JATRA MOHAN SEN . . . . . 1 C. W. N., 314

48. ——————— *Purchaser at a revenue sale—Act XI of 1859, s. 37—"Entire estates"—Partition by Collector, Effect of—Estates Partition Act (Beng. Act VIII of 1876), s. 123—"Time of settlement"*—A new estate created upon a partition by the Collector comes within the meaning of "entire estate" in s. 37 of Act XI of 1859. The words "time of settlement" in that sec-

amount of revenue, there is no settlement of the revenue in any sense at the time of such partition. KOOWAR SINGH *v.* GOUR SUNDER PERSHAD SINGH [I. L. R., 24 Calc., 887

49. ——————— *Act XI of 1859, s 37—"Eject," Meaning of—"Entire estate," Meaning of Notice.*—When an estate sold for arrears of revenue is recorded in a separate number in the Collector's rent-roll with a separate revenue assessed upon it, and the specification in the sale certificate granted under s 28 of Act XI of 1859 in the form prescribed by the Act shows that the estate sold was an entire estate, the mere fact of a portion of the

approved of. *Held* further that the law does not require any notice as a necessary preliminary to a

referred to. KAMAL KUMARI CHOWDHURANI *v.* KIRAN CHANDRA ROY . . 2 C. W. N., 229

50. ——————— *Unrecorded co-partner, Purchase by—Incumbrances—Act XI of 1859, ss 37, 53—A*, in November 1862, purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector and purchased by *A* on the 29th March 1863 *Held* that *A*, at the time of his second purchase, was an unrecorded co-partner of an estate within the meaning of s 53 of Act XI of 1859, and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of revenue. ABDOOL BARI *v.* RAMDASS COONDOO

[I. L. R., 4 Calc., 607

51. ——————— *Re-purchase by co-proprietor—Rights of under-tenants—Incumbrances—Act XI of 1859, s 53.*—Under s 53 of Act XI of 1859, a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the incumbrances created by the

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

defaulting proprietor. MAHOMED GAZI CHOWDHRY *v.* LEICESTER . . . 7 B. L. R., Ap., 52

S. C MAHOMED GAZEE CHOWDHRY *v.* PEAREE MOHUN MOOKERJEE . . . 16 W. R., 136

And this is so whether he purchases benami or from the benamidar after his purchase. *See* same case, and case of ALUM MANJEE *v.* ASHAD ALI [16 W. R., 138

52.———— Act XI of 1859, s. 54—*Bonâ fide incumbrances.*—The object of s. 54, Act XI of 1859, is to protect, not every incumbrance which may be set up, but only *bonâ fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *bonâ fide* character. MONOHUR MOOKERJEE *v.* JOYKISHEN MOOKERJEE . . . 5 W. R., 1

53.———— *Lease of a share.* —A lease of a share is protected under s 54, Act XI of 1859. KALEE PUDDO GHOSE *v.* MONOHUR MOOKERJEE . . . 7 W. R., 295

54.———— and s. 13—*La-*

[illegible]

purchaser. This share having been held by several successive benami holders, the main question was whether those who had granted the mokurari were entitled to all or to any, and what part, of the land comprised in their grant; and as to this point the most important fact was the actual possession or receipt of the rents; this being also material in regard to limitation under Act XV of 1877, sch. II, art. 144, the twelve years' bar commencing from the date of possession first held adversely. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD

[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

55.———— and ss. 10, 11, 28, 53, and Sch. A—*Rights of purchaser of share of estate admitted to special registration under ss. 10, 11 of Act—Rights of mortgagee of share against purchaser.*—There is a clear distinction between the rights acquired under ss 53 and 54 of Act XI of 1859 Under the former section, the terms of the certificate given under Sch. A are limited, and a purchaser under that section acquires the estate subject to all incumbrances existing at the time of sale, whether created before or after the default, and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under s 54, and all incumbrances created after the date on which a purchase under that section takes effect, that is, after the date on which the default was committed, are void. A share of a talukh admitted to special registration, under ss 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June kist of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring, in accordance with s. 28, that his title accrued from the 29th June, the day after the latest date allowed for payment of the June kist. *Held* that the mortgage was of no effect as an incumbrance under s. 54 of the Act CHOWDHRY JOGESSUR MULLICK *v.* KHETTER MOHUN PAL [I. L. R., 17 Calc., 148

(*e*) MADRAS ACT II OF 1864.

56.———— *Mad. Act II of 1864—Sale of land mortgaged—Purchase by mortgagee—Equity of redemption.*—Where land has been

[illegible]

[I. L. R., 7 Mad., 111

(*f*) BENGAL ACT VII OF 1868.

57.———— *Beng. Act VII of 1868, s. 12—Auction-purchaser, Right of—Lakhiraj grant—Onus probandi.*—A person seeking to obtain the benefit of s. 12, Bengal Act VII of 1868, must give some *primâ facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—that is, an incumbrance imposed on the tenure by some one who previously held it The law relating to lakhiraj grants reviewed and explained. KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE

[I. L. R., 8 Calc., 230 : 10 C. L. R., 41

(*g*) N.-W. P. LAND REVENUE ACT.

58.———— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 167, 169—Agriculturists' Loans Act (XII of 1884), s. 5—Takavi loans—Sale of house in default of payment of loan—Effect of such sale.*—The provisions of

[illegible]

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF.

59. ——— Purchaser of rights of Government—*Limitation.*—An auction purchaser of the rights of Government in a talukh sold for arrears of revenue is not privy in estate to the defaulting proprietor. He does not derive his title from him, and is bound neither by his acts nor by his laches. The purchaser, moreover, is bound by no limitation which would not bind or affect the Government. The talukh in this case having come into the possession of Government by resumption in 1811,—*Held* that the auction-purchaser could have no better title, and could be in no better position than the Government at the time of resumption BUZLOOL RAHMAN *v.* PRANDHUN DUTT . . . 8 W. R., 222

60. ——— Purchaser at sale on default of purchaser of rights of Government—*Government proclamation—Act XI of 1859*—The Government having sold its zamindari rights in certain talukhs after a proclamation that the purchaser would be bound to abide by the settlements entered into by it with the defendant talukhdars, one of the talukhs, a mehal, *J C B*, was purchased with this reservation by *M*, who then sued without success to eject the proprietor of the said talukh. After this, *M* having defaulted in the payment of the Government revenue, the mehal was sold for arrears under Act XI of 1859, and purchased by *G*. *Held* that *G* was in a very different position from *M* (who had purchased the zamindari rights of the Government), and was not bound by the terms of the Government proclamation, but was, as his sale certificate showed, the purchaser of an entire estate separately recorded on the Collector's rent-roll. GHOLAM MUKHDOOM *v.* ASHUCK JAN BIBEE . 25 W. R., 86

61. ——— Right to resume and assess lakhiraj land—*Act XI of 1859, s. 54*—When the former proprietor had a right to bring a suit to resume and assess lakhiraj land, the auction-purchaser of his rights and interests acquired the same right under s. 54, Act XI of 1859. DABEE MUNNEE CHOWDHRAIN *v.* FAQUEER CHUNDER SHAHA [W. R., 1864, 293

62 ——— Period from which title of purchaser dates—*Act I of 1845, s. 20.*—The title of an auction-purchaser at a sale for arrears of revenue accrues, not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under s. 20, Act I of 1845. DHEPUT SINGH *v.* MOTHOORANATH JAH W. R., 1864, 278

63. ——— Liability for Government revenue—*Right to recover money paid for arrears of revenue—Act XI of 1859, s. 21*—The purchaser of an estate sold for arrears of revenue on the 29th Pous, the latest date of payment of the revenue due

NUNDKOOMAR GOOPTO . . . 4 W. R., 75

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

64. ——— *Suit for money paid for arrears of revenue—Character of Government revenue—Apportionment of revenue—Purchaser's liability.*—Government revenue does not become due from day to day, but at certain specified times, according to the contract of the parties, or the custom of the district in which the lands liable to pay such revenue are situate. It is not therefore liable to apportionment, and the person who is the owner of a revenue-paying estate at a time when the payment of the revenue falls due is the only person liable for its payment The purchaser of an estate which pays Government revenue takes it subject to all revenue and cesses, whether in arrear or accruing *Held* therefore, in a suit by a purchaser for a certain sum for Government revenue and cesses, which became

recover. CHATRAPUT SINGH *v.* GIRINDRA CHUNDER ROY . I. L. R., 6 Calc., 389: 7 C. L. R., 456

See WOZEER BEGUM *v.* FUZLOONISSA [W. R., 1864, 373

65. ——— *Registered occupant—Bombay Survey Act, I of 1865.*—Government revenue being a paramount charge on the land, it adheres to the land and to every portion of it in-

pant to a purchaser who neglects to get his name registered in his books, the Collector may, after giving notice of the failure to pay the revenue to the

SHIDDHESHVAR *v.* MARDAN SAHEB 10 Bom., 419

66. ——— *Beng Reg. XLIV of 1793, ss. 5 and 7—Enhancement of rent.*—The object of s. 5, Regulation XLIV of 1793, taken together with s 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue It only empowered

and passing to subsequent purchasers. SHURNOMOYEE *v.* SUTTEES CHUNDER ROY [2 W. R., P. C., 14

S.C. SURNOMOYEE *v.* SUTTEES CHUNDER ROY [10 Moore's I. A., 123

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

67. ——— *Beng. Reg. XI of 1822, ss. 30, 33—Beng. Reg. XLIV of 1793, s. 5—Beng. Reg. VIII of 1793, s. 51.*—A zamindari was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held* that they had no right to enhance. The rights of the purchaser were defined by ss. 30 and 33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last-mentioned statutes contains any saving of rights acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of

is now of no force for any purpose but that of declaring the general principles upon which all the subsequent legislation has proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the decennial settlement, the only right which the zamindar could exercise over it was that conferred by s. 51 of Regulation VIII of 1793. The decision in the case of *Surnomoyee v. Suttees Chunder Roy, 10 Moore's I. A., 123*, commented on, explained, and reiterated. SATTYASARAN GHOSAL *v.* MAHESH CHANDRA MITTER . . . 2 B. L. R., P. C., 23

S. C. SUTTO SURRUN GHOSAL *v.* MOHESH CHUNDER MITTER

[12 Moore's I. A., 263 : 11 W. R., P. C., 10

S. C. in High Court, SUTTO CHURN GHOSAL *v.* MOHESH CHUNDER MITTER. SUTTO CHURN GHOSAL *v.* TARINEE CHURN GHOSE . 3 W. R., 178

68. ——— Certified purchaser—*Act XI of 1859, s. 36—Suit by certified purchaser—Benamidar.*—A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of s. 36, Act XI of 1859, unless he has acknowledged himself to be a benamidar. JADUB RAM DEB *v.* RAMLOCHUN MUDDUCK

[5 W. R., 56

Review rejected . . . 10 W. R., 180

69. ——— *Act XI of 1859, ss. 36 and 53—Purchase by former proprietor.*—

portion of the purchase-money, but that her name was not registered on account of *M's* having no written authority to act on her behalf. *M*, however, executed an ikramamah in which he admitted receipt of the purchase money of plaintiff's 2 annas share, and covenanted to give her possession. Defendant

and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person, and the suit was therefore barred by s. 36 of Act XI of 1859. *Held* also that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co sharer to be a purchaser of his estate at a sale for arrears due on that estate. NEYNUM *v.* MUZUFFUR WAHID . . 11 W. R., 235

70. ——— *Decree setting*

Government revenue, the defaulting tenant brought a suit in the Civil Court to have the sale set aside, and obtained a decree which he did not attempt to execute till after the expiry of six months from its date. *Held*, in a suit brought by the auction-purchaser to recover possession of the share he had brought at the sale, that such non-execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. ABDUL LOTIF *v.* YOUSUFF ALI

[I. L. R., 21 Calc., 255

71. ——— *Liability of purchaser at a sale, who enters into possession of the purchased property, to account for mesne profits to the person in whose favour the decree is subse-*

rightful owner by being kept out of possession, but he is bound to account for mesne profits, the calculation of which is to be based on a proper discharge of the stewardship of the property. *Dakhina Mohun Roy Chowdhry v. Saroda Mohun Roy Chowdhry, I. L. R., 21 Calc. 142 : L. R., 20 I. A., 160*, cited and followed. PERUMAL UDAYAR *v.* KRISHNAMA CHETTYAR I. L. R., 17 Mad., 251

72. ——— *Act XI of 1859, s. 54—Sale of share of Hindu widow—Effect of sale on reversionary interest.*—Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that under s. 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow. *Held* that the purchaser did not take any interest limited to the life of the widow, but that the

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

entire share passed by the sale. DEBI DAS CHOWDHURI *v.* BIPRO CHARAN GHOSAL

[I. L. R., 22 Calc., 641

73. ———— *Act XI of 1859, s. 14—An ijmali portion of an estate in arrear—Arrear separately deposited by co-sharers of other portions—Certificate of sale issued jointly to all the co-sharers—Share of each co-sharer in the purchased portion—Transfer of Property Act (IV of 1882), s. 45—Presumption.*—Where an estate was divided into several shares and one of them was left as the ijmali kalam and for others separate accounts had been opened with the Collector, and the owners of the ijmali kalam having failed to pay their share of the revenue it was put up to sale, but could not fetch a price sufficient to cover the sum in arrears and each of the co-sharers paid the entire amount of arrear separately, and the Collector issued a certificate of sale jointly to them,—*Held* that the different sharers should be entitled to equal shares in the purchased estate irrespective of their shares in the parent estate. That there being no evidence to show how the Collector made up the arrear from the funds which the parties respectively advanced, the presumption was that the Collector took from each of the funds an equal share. DEBI PERSHAD *v.* AKLIO KOER . . . 4 C. W. N., 465

74. ———— *Purchaser at a revenue-sale—Act XI of 1859, ss. 2, 35, and 37—"Entire estate," Meaning of—Effect of estate being recorded under a distinct number on the rent roll, with a separate revenue assessed upon it—Protected interest.*—When an estate is recorded under a distinct number on the touzi or rent-roll of

W. R., 2'9, referred to PRANONATH MITTER *v.* KIRAN CHANDRA ROY . . I. L. R., 27 Calc., 290

75. ———— *Mad. Reg XXV of 1802, s. 12—Madras Revenue Recovery Act II of 1864, ss 32, 41.*—The purchaser at a revenue-sale is *primâ facie* entitled to claim the faisal rate of rent. PALANI *v.* PARAMASIVA

[I. L. R., 13 Mad., 479

76. ———— *Madras Revenue Recovery Act (Mad. Act II of 1864), ss 1, 39, 42—Rights of jenms in Malabar—Grant by Government of waste land on a cowle.*—The Collector of Malabar in 1869 let defendant 2 into

revenue, the land was accordingly attached in 1885 for arrears of revenue under the Madras Revenue

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*concluded.*

Recovery Act, 1864, and sold to defendant 3 The plaintiff, who was the jenmi of the land, had no notice

the interest of the jenmi did not pass by the sale. SECRETARY OF STATE *v.* ASHTAMURTHI

[I. L. R., 13 Mad., 89

77. ———— *Madras Revenue Recovery Act (II of 1861), ss. 42, 44—Sale of part of a holding for arrears of revenue due on another part.*—The plaintiff sued, as the purchaser under a Court sale, for possession of certain land, which the defendant's vendor had purchased at a sale held under the Madras Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment-debtor *Held* that, under the sale for arrears of revenue, the land had passed to the defendant's vendor, and that the suit should be dismissed. SAMA *v.* SRINIVASA

[I. L. R., 13 Mad., 477

78. ———— *Madras Revenue Recovery Act (Mad. Act II of 1861), s. 42—Incumbrance—Permanent lease at a low rent.*—One of the villages in a mitta was demised by the mittadar to *A* on a permanent lease, at a rate below both the faisal assessment and the proportion of revenue payable upon it. The lessee's interest was brought to sale in execution of a decree and purchased by *B*, and ultimately was sold in 1884 to the plaintiff, who now sued the tenant in possession to enforce an exchange of pattah and muchalka In the interval, *viz.*, in 1883, the village was sold for arrears of revenue under Madras Act II of 1864 to *C*, and the defendant claimed to hold the land from *C*. *Held* that the permanent lease was an incumbrance under the Madras Revenue Recovery Act, 1864, s 42, and was voidable by the purchaser at the revenue-sale, although it had not been declared to be invalid by the Collector NARASIMMA *v* SURIANARAYANA I. L. R., 16 Mad., 144

6. DEPOSIT TO STAY SALE.

79. ———— Tender of full amount of arrears of revenue — *Madras Revenue Re-*

ing such tender, proceeded to sell on the ground that arrears had accrued between the date of attachment and the date of tender, — *Held* that the sale was invalid SECRETARY OF STATE FOR INDIA *v* GOUNDAN

[I. L. R., 22 Mad., 5

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*continued.*

If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talukh, who has only a limited interest therein, and confines his suit to that object, the decree so obtained against the person in possession can only be made effectual against the

she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest. NOGENDER CHUNDRO GHOSE *v.* DOSSEE . . . . . 8 W. R., P. C, 17

S. C. NUGENDER CHUNDER GHOSE *v.* KAMINEE DOSSEE . . . . 11 Moore's I. A, 241

87. ——— **Payment by patnidar to save tenure from sale**—*Mistake in Collectorate in crediting payment as deposit.*—The payment of revenue into the Collectorate by a patnidar to

[W. R., 1864, Act X, 11

88. ——— **Payment by shareholder** —*Voluntary payment of arrear of revenue—Right to reimbursement—Act XI of 1859, s. 13.*—A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-shareholder who has a separate account, before the share of such defaulter has been put up for sale under the provisions of s. 13, Act XI of 1859, cannot claim to be reim-

MOZOOMDAR . . . .

89. ——— **Right of suit to recover**

revenue due by a defaulting proprietor of an estate, his suit to recover the amount paid is not inadmissible, merely because there exists no privity between plaintiff and defendant. WOOMAMOYEE BURMONYA *v.* HILLS . . . . 11 W. R., 377

90. ——— **Right of suit to recover amount deposited**—*Payment made by mokuraridar for predecessor—Payments of revenue in excess of lease—Voluntary payment.*—Instalments of Government revenue paid by a mokuraridar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859. Payments on account of Government revenue in excess of lease are not recoverable. BUNWAREE KISHORE *v.* JOY CHUNDER GOSSAIN . . . . . 2 W. R., 262

91. ——— **Obligation of lender of money to stay sale**—*Necessity.*—A lender is not bound to inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue. It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment. NUFFER CHUNDER BANERJEE *v.* GUDDADHUR MUNDLE 3 W. R., 122

92. ——— **Right to contribution where part owner pays revenue due on whole estate to save his own interests**—*Madras Revenue Recovery Act, s. 35—Contract Act, ss. 69, 70.*—In 1881, while the pottah of certain land held on raiyatwari tenure stood in the name of defendant No 1, the real owner being defendant No 2, the revenue fell into arrear. Subsequently plaintiff and defendant No 3 each bought a portion of the land, and defendant No 3 sold his portion to defendant No. 4. After this, the land in plaintiff's possession was attached for the said arrears of revenue and plaintiff paid the whole amount to prevent a sale. Plaintiff sued to recover from defendants 1 to 4 a portion of the arrears paid by him. He also

[I. L. R., 11 Mad., 452

93. ——— **Payment of arrears of**

to a charge for the amount of the revenue arrears paid by the plaintiff. In 1890 the plaintiff instituted the present suit to recover from the entire village and from the defendants Nos 1 to 84 personally the amount of these arrears. *Held* that the 85th

not only registered proprietors, but real owners and their holdings, may be treated as defaulters within the

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*concluded.*

meaning of s. 35 of that Act. *Seshagiri* v. *Pichu, I. L. R., 11 Mad., 437,* followed. SRINIVASA THATHACHAR *v.* RAMA AYYAN I. L. R., 17 Mad., 247

7. SALE-PROCEEDS.

94. ———— **Right to surplus proceeds** —*Estate subject to mortgage.*—When mortgaged lands are sold for arrears of Government revenue, not [illegible]

[10 W. R., [illegible]

95 ———— **Right to payment out of surplus proceeds**—*Liability of purchaser to reimburse judgment-debtor—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 146—Act X of 1877, s. 316.*—A share of a mehal, arrears of Government [illegible]

date. The Collector attached and realized the amount of the arrears out of the surplus sale-proceeds. *Held* that, inasmuch as at the date of the realization of the arrears out of the surplus sale-proceeds the purchaser was the proprietor of the share, and it and he were responsible under s. 146 of Act XIX of 1873 (N.-W. P. Land Revenue Act) for the arrears, the payment of the arrears out of the surplus sale-proceeds must be regarded as a payment made *in invitum* by the judgment-debtor for the purchaser, and the judgment-debtor was entitled to be reimbursed by the purchaser. RAM CHAND *v.* FATEH SINGH

[I. L. R., 6 All., 112

96. ———— **Suit for sale-proceeds by mortgagee**—*Omission to give notice of charge on estate sold.*—*A* purchased certain villages in the name of his son *B*. *A*, being indebted to *C*, executed a mortgage-bond and deposited the title-deeds of those villages with *C* as security for the debt. *C* afterwards sued *A* for recovery of the mortgage-debt, and ultimately obtained a decree in his favour. Pending this suit, *A* died and was succeeded by *B*, his heir, against whom the suit was revived. *B* became a defaulter to Government, when the Government authorities seized the villages, and took steps for bringing them to sale to satisfy the Government demands. *C* informed the Government officer of his claim, and petitioned to have the sale stayed, but the Collector sold the villages as the property of *B*, suppressing the notice of the equitable charge of *C* upon the villages. *C* then sued *B*, the Collector, and the auction purchasers, claiming to be entitled to the sale-proceeds of the villages in the hands of the Government in satisfaction of his mortgage-debt. The Sudder Dewany Court dismissed the plaintiff's claim, on the ground that the decree made in the suit against *A* was against the effects of *A*, and only

SALE FOR ARREARS OF REVENUE —*continued.*

7. SALE-PROCEEDS—*concluded.*

[illegible]

auction-proceeds received by them, and an account was directed of the amount received by the Collector [illegible]

DOUGLAS *v.* COLLECTOR OF BENARES

[5 Moore's I. A., 271

8. SETTING ASIDE SALE

(*a*) IRREGULARITY.

97. ———— **Irregularity in conduct of sale**—*Act XI of 1859, ss. 25, 26, 27-33—Substantial injury—Form of petition—Remedy by* [illegible]

on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such [illegible]

substantial injury caused thereby. If no irregularity producing substantial injury is proved, the Civil Court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages as provided for in s. 33. WOOMESH CHUNDER CHATTERJEE *v.* COLLECTOR OF 24-PERGUNNAHS. WOOMESH CHUNDER CHATTERJEE *v.* ISHAN CHUNDER

[8 W. R., 439

98. ———— **Omission to give notice of sale**—*Act XI of 1859, s. 33—Material injury—Setting aside sale, Ground for.*—To sell an estate for arrears under Act XI of 1859, after failing the

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued*

proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale, is of itself a very material injury irrespective of the amount of purchase-money realized, and one amply sufficient to warrant a Court in annulling the sale under s 33. MOHABEER PERSHAD SINGH *v.* COLLECTOR OF TIRHOOT

[15 W. R., 137

99. ——— **Omission to serve notice on minor defaulter**—*Madras Revenue Recovery Act (II of 1864), ss 25, 27—Mad. Reg. V of 1804, s. 20.*—A mitta consisting of an unsurveyed village, of which the plaintiffs (minors) were the registered proprietors of an undivided moiety, was brought to sale for arrears of kist and was purchased for the plaintiffs by their guardian, duly appointed under Reg. V of 1804, s 10. The sale was subsequently cancelled; and further arrears having accrued, the mitta was attached again. Before the

The sale took place in September, and defendant No 2 became the purchaser. It was admitted that a division of the village was impracticable. In a suit by the plaintiffs by their mother and next friend to set aside the sale,—*Held,* since service of a demand upon the defaulter is an essential preliminary to sale, the sale was invalid so far as the share of the plaintiffs was concerned, and the sale as a whole was vitiated by the irregularity. MEKAPERUMA *v.* COLLECTOR OF SALEM

[I. L. R., 12 Mad., 445

100. ——— **Irregularity in issue of notice**—*Ground for setting aside sale—Damage to defaulter*—A sale under Act XI of 1859 may not be set aside on the ground of irregularity in the issue of notices, unless such irregularity is shown to have caused loss or damage to the defaulter. LULEETA KOOER *v* COLLECTOR OF TIRHOOT

[19 W. R., 283

101. ——— **Notification of sale, Necessary contents of**—*Act XI of 1859, s. 33*—It is unnecessary to specify in the notification of sale the names of the mouzahs included in the property

[I. L. R., ... Calc., ...

S C. AMIRUNNESSA KHATOON *v.* BROWNE

[13 C. L. R., 131

ZEEKALEE KOOER *v.* LALLA DOORGA PERSHAD

[16 W. R., 149

102. ——— **Sale Notification**—*Act XI of 1859, s. 6—Description—"Residue" of an estate.*—In a notification of sale under Act XI of 1859 the share of an estate intended to be put up for

considered to be a sufficient description. ANNADA CHARAN MUKHUTI *v.* KISHORI MOHON RAI

[2 C. W. N., 479

103. ——— **Notification of sale, Omission in**—*Revenue-paying estate—Sale of share of an estate—Recorded proprietors—Omission of names of proprietors—Irregularity—Act XI of 1859, ss 6, 33.*—When a notification of sale of a share in a revenue paying estate is issued under s. 6, Act XI of 1859, the circumstance that such notification does not contain the names of all the recorded proprietors of the share, but only the name of one of them does not amount to an irregularity within the meaning of s 33, Act XI of 1859. SECRETARY OF STATE FOR INDIA *v.* RASHBEHARY MOOKERJEE

[I. L. R., 9 Calc, 591: 12 C. L. R., 27

...shing ...—*Act* ... *1868,* ...by the Collector under s 6 of Act XI of 1859, fixing the 31st May 1879 as the date for holding the sale, was affixed in the places mentioned in the section on the 2nd May 1879 ... certained ... Sunday, ... of the Ac... postponin...

May. *Held* further that the Court was not bound, under s. 8 of Bengal Act VII of 1868, to presume conclusively that the provisions of s. 6 of Act XI of 1859, as regards the fixing of the date of sale, had been complied with. Under s 8 of Bengal Act VII of 1868, the effect of a certificate of title having been given to the purchaser is merely that the Court is bound to presume conclusively the due service and posting of notices. BAL MOKOOND LALL *v.* JIRJUDHUN ROY . I. L. R., 9 Calc., 271

S C. BUL MOKUND LAL *v.* TEIJOODHUN ROY

[11 C. L. R., 466

105. ——— ...

... of s. 6, Act XI of 1859, is not a mere irregularity, and is not one of those errors in procedure which are

SALE FOR ARREARS OF REVENUE —*continued.*

8 SETTING ASIDE SALE—*continued.*

intended to be cured by s. 8 of Bengal Act VII of 1868. Where a sale for arrears of revenue has been held, and non-compliance with s 6 has been found, such a sale is null and void, as not being a sale under the provisions of Act XI of 1859. *Semble*—That no positive rule can be laid down permitting an inference to be drawn in all cases that the inadequacy of the price realized by a sale is due to the irregularity of the sale-proceedings. *Per* TOTTENHAM, J.—

[illegible]

legal defect found in the present case, the Court was not at liberty to infer that the inadequacy of the price realized by the sale was due to the irregularity of the sale proceedings. LALA MOBARUK LAL *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 11 Calc., 200

106. ——— *Civil Procedure Code, 1859, s. 218—Act XIX of 1873, s 3*—In the case of a sale by the Civil Court of forest land,

[illegible]

of Act VIII of 1859 and s 3, cl. 1, of Act XIX of 1873, and that therefore the sale should have been held by the Collector. SHOWERS *v.* GOBIND DAS

[I. L. R., 1 All., 400

107. ——— **Irregular publication of** *sale—Act I of 1845, ss. 6 and 14, and Act IX of 1854.*—Sale for arrears of revenue set aside,—the sale advert

published in

and secondly

consecutive

Collector of t

Act. Such an irregularity is not cured by Act IX of 1854, which relates only to technical errors of procedure in the lower Court which are not productive of injury to either party MAHASHUR SINGH BAHADUR *v.* HURRUCK NARAIN SINGH . 9 Moore's I. A., 268

108. ——— *Sale for arrears of road-cess—Certificate of title—Certificate of unpaid demand—Collector of the district—Defects in service of notice and in proclamation of sale—Act XI of 1859, ss. 27, 29—Beng. Act VII of 1868, ss. 5, 8, 11—Public Demands*

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

Recovery Act (Beng. Act VII of 1880), ss. 2, 4,

[illegible]

the provisions of these Acts, and cannot cure

[illegible]

Recovery Act (VII of 1880) a certificate under the Act must be made and filed by the Collector of the district, and not by any officer gazetted to perform the functions of a Collector under Act VII of 1880. MONINDRA NATH MOOKERJI *v.* SARASWATI DASI

[I. L. R., 18 Calc., 125

109. ——— *Public Demands Recovery Act (Beng. Act VII of 1880), s. 9 (b) and 10—Notice under s. 10 compulsory—Sale.*—When the notice required under s. 10 of Bengal Act VII of 1880 was not served, and in execution of the certificate the judgment-debtor's property was sold,—*Held* that the whole of the proceedings which resulted in the sale were invalid. SARODA CHARAN BANDOPADHAYA *v.* KISTO MOHUN BHATTACHARJEE . . . 1 C. W. N., 616

110. ——— *Suit to set aside sale—Notice of sale, Publication of—Act XI of 1859, ss. 5 and 7.*—Where it was contended that a sale under Act XI of 1859 was bad on the ground that the notices prescribed by ss. 5 and 7 of that Act were not published,—*Held* that, there being no subsisting attachment on the property at the time it was sold, omission to issue notice under s. 5 did not vitiate the sale. *Held* that, in the absence of proof that the plaintiff had sustained substantial injury on account of the omission to issue notice under s. 7, such omission did not invalidate the sale. MAHOMED AZHAR *v.* RAJ CHUNDER ROY

[I. L. R., 31 Calc., 354

111. ——— *Madras Revenue Recovery Act (Mad. Act II of 1864), ss. 38, 59—Sale for arrears of peishcush—Material irregularity or mistake in conduct of sale—Grounds for setting sale aside—Posting notice of sale in Collector's office—Jurisdiction of Civil Courts.*—

[illegible]

caused by such irregularity or mistake. A Civil

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

Court cannot cancel the sale unless such substantial injury has been established. The words "except as otherwise is hereinafter provided," which occur in cl. (1) of s. 38, refer to the action which the Collector is empowered to take *suo motu*, under cl (3) of the same section, and have no relation to the remedy provided by s. 50 Direct evidence is not necessary to connect inadequacy of price realized with a material irregularity, where the latter has been proved: and the relation of cause and effect between the two may be inferred where such inference is reasonable But where the only irregularity shown was an omission to display the notice of sale in the Collector's office, and there was no evidence to show that this affected the attendance of buyers at a place many miles distant, where the sale actually took place, the inadequacy of price being susceptible of other explanations,—*Held* that it was not shown that the irregularity referred to had caused substantial loss, and that there was therefore no ground for setting the sale aside. BOMMAYYA NAIDU *v.* CHIDAMBATRAM CHETTIAR

[I. L. R., 22 Mad., 440

112. ——— *Act XI of 1859, s. 5—Attachment by order of Civil Court—Latest day of payment, Attachment subsequent to.*—In a suit to set aside the sale of an estate for arrears of revenue, one of the grounds taken by the plaintiff was that the estate, which was under attachment by an order of the Civil Court at the time of the sale, was sold without due observance of the formalities prescribed by s 5, Act XI of 1859. The date fixed for payment of the arrears for which the estate was sold was the 7th June 1890. The date of attachment was 2nd August following. *Held* that s. 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale. That section would not therefore apply to a case like the present in which the attachment was after the last day of payment and after the estate had become liable to sale for arrears of Government revenue. *Bunwari Lall Sahu v. Mohabir Persad Singh, 12 B. L. R.,* 297 *: L. R., 1 I. A.,* 89, referred to. NOWBUT LAL *v.* RADHA KRISTO BHUTTACHARJEE

[I. L. R., 22 Calc., 738

113. ——— *Bombay Land Revenue Code (Bom. Act V of 1879), ss. 56, 57, 150. and 153—Confirmation of sale by Collector—Omission of Collector to make—Declaration of forfeiture before sale*—A sale of a holding for default of payment of assessment is not invalid, although prior to the sale there has been no declaration of forfeiture by the Collector. ...

evidence that forfeiture had been declared. GANPATI *v.* GANGARAM . I. L. R., 21 Bom., 381

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

114. ——— Irregularity in refusing ...

Therefore, where a fine had been imposed for non-attendance of proprietors before a Deputy Collector for the purpose of a partition under Regulation XIX of 1814, and the amount had been ordered to be paid on a given day but was not so paid but tendered ...

[8 B. L. R., 230: 17 W. R., 21

115. ——— Irregularity in not accepting highest bid—*Obligation of Collector to sell* ...

[8 W. R., 372

(b) OTHER GROUNDS.

116. ——— Fraud—*Act XI of 1859, ss. 6, 7, 18—Ground for setting aside sale.*—In a suit to set aside a sale for arrears of Government revenue held on the 26th March 1879, it was alleged as grounds for setting the sale aside (1) that the arrears had been paid into the Collector's treasury on the previous day and a receipt granted for them, and ...

Held that the sale was valid, as no order had been made by the Collector in writing exempting the property from sale under s. 18 of Act XI of 1859, mere payment of arrears into the treasury without ...

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

See *Bal Mokoond Lall v. Jirjudhun Roy, I. L. R., 9 Calc., 271. 11 C. L. R., 466.* GOBIND CHUNDRA GANGOPADHYA *v.* SHERAJUNNISSA BIBI [13 C. L. R., 1

117. ——— *Act X of 1876, 4—Jurisdiction of Civil Court—Fraud of officers conducting sale.*—S. 4, cl. (c), of Act X of 1876 excepts from the jurisdiction of the Civil Court claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN . I. L. R., 5 Bom., 73

118. ——— *Act XI of 1859, s. 33.*—S. 33 of Act XI of 1859 should not be read as meaning that under no possible circumstances can a suit be brought to set aside a sale on the ground of fraud. AMIRUNNISSA KHATOON *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL [I. L. R., 10 Calc., 63

S. C. AMIRUNNESSA KHATOON *v.* BROWNE [13 C. L. R., 131

119. ——— *Beng. Act VII of 1868—Sale improperly conducted.*—In a suit ...

... of Beng. Act VII of 1868, but improperly and irregularly, it can only be questioned by a suit brought within proper time and against proper parties. RAJ LUKHEE DASSEE *v.* PEAREY BIBEE 23 W. R., 82

120. ——— *Bidders, Dissuasion of.*—In a suit by some of the co-sharers in a mouzah against the others to set aside a sale for arrears of revenue, the finding of the Court of first instance established that a certain co-sharer in a mouzah had intentionally withheld the payment of a small arrear of Government revenue, and had thereby caused the property to be sold under Act XI of 1859, purchasing it himself at a small sum in the name of certain other persons, and had ...

... facts to have been established, the right of the co-sharer to buy up the estate at the revenue-sale was not based upon any right of interest common to himself and his co-sharers, and that, in the absence of misrepresentation or concealment, the fact that he had intentionally defaulted as found, did not constitute fraud; nor did the fact that he had deterred others from bidding for the property, necessarily constitute an act of fraud. *Bhoobun Chunder Sen v. Ram Soonder Surma Mozoomdar, I. L. R., 3 Calc., 300,* distinguished. DOORGA SINGH *v.* SHEO PERSHAD SINGH [I. L. R., 16 Calc., 194

121. ——— *Sale without attachment—Attachment of property sold, not necessary—Sale ultra vires—Act XI of 1859, ss. 5, 17.*—The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all ...

... *Mobaruk Lal v. Secretary of State for India in Council, I. L. R., 11 Calc., 200,* applied. GOBIND LAL ROY *v.* BIPRODAS ROY [I. L. R., 17 Calc., 398

122. ——— *Act XI of 1859 (Bengal Revenue Sale Law), ss. 3, 8, and 33—Bengal Excise Act (Beng. Act VII of 1868), s. 2—Unauthorized sale by Collector—Jurisdiction of Civil Court.*—Act XI of 1859, the Bengal Revenue Sale law, providing for the sale of estates in arrear of payment of revenue, does not sanction, and by plain implication forbids, the sale of any estate which is not at the time in arrear of such payment. The ...

... of s. 33 of Act XI of 1859, relating to an appeal to the Commissioner of Revenue, did not exclude that jurisdiction. The enactment in s. 8 had no application to such a case. This was not a question about a transfer from the account of one revenue-paying estate to that of another, nor was it a claim for remission or abatement, which had not been duly allowed by the Government. S. 8 has no application, except there be (1) default in payment of the revenue, and (2) possession by the Collector of money of the defaulter not indisputably placed to his credit. But here there was no default. All moneys paid by the appellants were credited, and their alleged default was based upon erroneous debit entries to which they were not parties. BALKISHEN DAS *v.* SIMPSON . . I. L. R., 25 Calc., 833
L. R., 25 I. A., 151
2 C. W. N., 513

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

123. ———— **Sale where no arrears due** —*Bonâ fide purchase.*—The sale of an estate for arrears of revenue where no such arrears exist is null and void, even though it is regularly conducted and the purchase is made *bonâ fide.* SREEMUNT LALL GHOSE *v.* SHAMA SOONDUREE DASSEE [12 W. R., 276

RAM GOBIND ROY *v.* KRISHTEEPOOZA [15 W. R., 141

See BAIJNATH SAHU *v.* LALLA SITAL PRASAD [2 B. L. R., F. B., 1 : 10 W. R., F. B., 66

and HARKHOO SINGH *v.* BUNSIDHUR SINGH [I. L. R., 25 Calc., 876

124. ———— *Act XI of*

125. ———— *Suit to set aside sale—Sanction of Commissioner*—A suit to set aside a sale for arrears of revenue on the ground that no arrears were due may be brought without previous sanction of the Commissioner. THAKOOR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS [13 W. R., 336

126. ———— *Act XI of 1859, s. 5—Act XI of 1838—Suit to set aside sale*

and R9-9-6, to pay the Government revenue. On the 28th March such proclamation was issued accordingly. Subsequently one of the plaintiffs came in, and offered to pay all that was then due and outstanding. His application was rejected, and on the same day, the 8th April, the sale proceeded, and the whole interest of the plaintiffs was sold for R16,900. The plaintiffs appealed to the Commissioner, but their appeal was dismissed. The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancelment of the sale. *Held* that the sale was void. There was no

and fixed by the Commissioner. The Board must give its sanction in each case, and the defendants failed to show that it had done so. But even if the Commissioner had power finally to determine the amount and date of payment, it was not shown that

127. ———— **Unauthorized sale by Collector**—*Want of sanction—Subsequent confirmation*

faulting proprietor. The proprietor's acquiescence

be taken of the principal and interest due to the

THE WIDOW OF JUSWUNT SINGH [6 W. R., P. C., 15 : 3 Moore's I. A., 42

128. ———— **Sale for arrears of revenue of mitta held by tenants-in-common during minority of some of the owners.**—*Mad. Reg. X of 1831, ss. 2, 3—Mad. Reg. V of 1804, s. 14 (4),* itta held by tenants-in-common was of revenue

SALE FOR ARREARS OF REVENUE
—continued.

8. SETTING ASIDE SALE—*continued.*

OF SALEM *v.* MEKAMPERUMA [I. L. R., 10 Mad, 44

129.———— **Payment of arrear of revenue through post office**—*Act XI of 1859, s 2—Payment by postal money order.*—Where the rever
office by
not, owin
the Collc
for arrears of revenue,—*Held* that the sale was rightly held Payment to the post office is not equivalent to payment to the Collector, and the post office cannot be considered as the agent of the Collector BAIKANTHA NATH DUTT *v* GUNOA PROSAD PUTNAYAK . . . 4 C. W. N., 103

act which may, or may not, be performed The High Court having set aside a sale, as contrary to the provisions of Act XI of 1859, upon a ground other than that declared and specified in an appeal made to the Commissioner of Revenue against the order for the sale, the Judicial Committee, referring to s. 33 as prohibiting such a course, reversed the decision of the High Court. LALA GAURI SANKER LAL *v.* JANKI PERSHAD I. L. R, 17 Calc, 809 [L. R., 17 I. A., 57

131.———— **Exemption from sale of land under attachment by Collector**—*Act XI of 1859, ss. 17, 25, 33—Beng. Act VII of 1868—Suit to set aside sale—Bengal Cess Act (Beng. Act IX of 1880)—Omission to specify ground of objection in revenue appeal.*
estate sold for arrears of revenue had
facts to previously brought to a judicial sale by
co-sharer gee, whose charge preceded that of a
was not base mbrancer, whom the present plaintiffs
to himself and It was not the consequence of the
of misrepresentat that puisne incumbrancers, who
had intentionally to the prior mortgagee's suit, were
constitute fraud; n with nothing but a claim against
deterred others fron of the sale, if any, and on the
necessarily constitute plaintiffs had a mortgagee's
Chunder Sen v. Ram ate sold by the Collector,

SALE FOR ARREARS OF REVENUE
—continued.

8. SETTING ASIDE SALE—*continued.*

entitling them to sue to have the sale for default in payment of revenue set aside, as contrary to Act XI

in arrear, is contrary to s. 17 of Act XI of 1859, such an order being an attachment within the meaning of that section. But under s. 33 of that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under s. 25. The above provision in s. 33 applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of the land from sale for arrears having been contravened *Lala Gauri Sanker Lal* v. *Janki Pershad, I. L. R., 17 Calc., 809: L. R., 17 I A., 57,* referred to. GOBIND LAL ROY *v.* RAMJANAM MISSER [I. L. R, 21 Calc., 70 L. R., 20 I. A., 165

132.———— **Sunset law**—*Beng. Act VII of 1868, s 11—Revenue Sale Law (Act XI of 1859), s. 6.*—S. 11 of Bengal Act VII of 1868

dered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal AZIMUDDIN PATWARI *v.* SECRETARY OF STATE FOR INDIA . I. L. R, 21 Calc., 360

133.———— **Payment of arrears before sale without obtaining exemption from sale**—*Act XI of 1859, ss 6, 13, 14, and 33—Proceedings when share of estate is not sold at auction-sale—Ground for annulling sale not declared and specified in appeal to Commissioner*—The plaintiffs and defendants were sharers in a certain estate, the plaintiffs being owners of a joint share, and the

made an order under s. 14 of Act XI of 1859 that, unless the arrears were paid by the other sharers (the defendants) within ten days, the whole estate

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

would be put up for sale. Notices of this order, provided for by a rule made under the Act by the Board of Revenue, were given to the serving peon on the 2nd October for service on the defendants, and the arrears were paid in by some of the defendants on the 4th and by others on the 7th October, and

missioner, but their appeal was rejected on the 10th March 1891. In a suit for a declaration that the proceedings taken by the Collector under s 14 of the Act were illegal and conveyed no title to the defendants, and for possession of the joint share with mesne profits,—*Held* by PETHERAM, *C.J.*, and

latter objection, as it was not declared and specified in their grounds of appeal to the Commissioner in accordance with s. 33 of the Act. *Gobind Lal Roy* v. *Ramjanam Misser, I. L. R., 21 Calc., 70,* followed. *Per* AMEER ALI, *J., contra. Per* PETHERAM, *C.J.*—S 33 applies to sales under s. 14 as well as to sales by public auction under the Act. *Semble* —There is nothing in Act XI of 1859 which would have prevented the plaintiffs from purchasing the

defendants; and under s. 14 they are expressly de-

held at a place prescribed by the proper authorities at which there are bidders and a possibility of competition. GOSSAIN CHUTTURBHOOJ DUT *v.* ISHRI MUL . . . . . I. L. R., 21 Calc., 844

134. ———— Benami purchase for defaulting proprietors—*Beng. Reg. XI of 1822—*

BANERJEE . . . . . 5 W. R., 154

SALE FOR ARREARS OF REVENUE —*continued.*

8 SETTING ASIDE SALE—*concluded.*

135. ———— Fraudulent purchase by judgment debtor—*Act XI of 1859—Right of decree-holder.*—In a suit to recover possession of a

136. ———— Failure of consideration—*Suit to set aside sale and recover purchase-money on the ground that subject of sale was alluvial land and practically non-existent.*—An estate does not necessarily mean land but may denote julkur, phulkur, or bunkur rights

Muddun Mohun Thakoor, 13 Moore's I. A., 467, be sold as an estate. A suit, therefore, by a purchaser of such an estate to have the sale set aside and

[10 W. R., 1

137. purch *1821.*— ment

Bengal Regu- s brought to decision was But the sale

[3 Moore's I. A., 100

S. C. DEEP NARAIN SINGH *v.* LAL CHUTTERPUT SINGH . . . . . 6 W. R., P. C., 27

9. MISCELLANEOUS CASES.

138. ———— Act XI of 1859, s. 5—*Effect of notification under Act—Attachment.*—A notification issued under s 5, Act XI of 1859, is simply a public call on the debtor to pay his debt by a fixed date; it does not operate as an attachment by the Civil Court. NURKOO RAM *v.* RAMJOORAWUN SINGH . . . . . 9 W. R., 481

SALE FOR ARREARS OF REVENUE —*concluded.*

9. MISCELLANEOUS CASES—*concluded.*

139. ———— Transfer of tenure from one Collectorate to another—*Payment of revenue—Notice of transfer.*—If a tenure is transferred from one Collectorate to another, and the holder of the tenure, after receiving notice of the transfer, continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. THAKOOR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS . . . 13 W. R., 336

140. ———— Act XI of 1859, s. 31—*Recorded proprietor, Representative of—Execution of decree—Purchaser in execution of decree—Revenue sale—Deposit—Assignee.*—S. 31 of Act XI of 1859 must be read strictly. An assignee of the recorded proprietors is not their representative within the meaning of that section, and the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, money held in deposit on account of the recorded proprietors. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MAHJUM HOSEIN KHAN [I. L. R., 11 Calc., 359

SALE FOR ARREARS OF ROAD CESS.

See BENGAL CESS ACT, 1871, s. 3. [I. L. R., 12 Calc., 430

See BENGAL CESS ACT, 1880, s 47 [I. L. R., 24 Calc., 27

See BENGAL TENANCY ACT, s. 65. [I. L. R., 21 Calc., 722

See LIMITATION ACT, 1877, ART. 12. [I. L. R., 23 Calc., 775 L. R., 23 I. A., 45

See PUBLIC DEMANDS RECOVERY ACT, s. 2 [I. L. R., 14 Calc., 1 I. L. R., 23 Calc., 641

See PUBLIC DEMANDS RECOVERY ACT, s 7. [I. L. R., 23 Calc., 775 L. R., 23 I. A., 45

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT.

SALE IN EXECUTION OF DECREE.

SALE IN EXECUTION OF DECREE —*continued.*

SALE IN EXECUTION OF DECREE—*continued.*

See ARMS ACT, 1878.
[I. L. R., 9 Bom., 518

See COLLECTOR . I. L. R., 23 Bom., 531

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.
[I. L. R., 3 Bom., 214, 217
I. L. R., 17 Bom., 289
I. L. R., 21 Calc., 940
I. L. R., 22 Calc., 767
I. L. R., 18 Mad., 477
I. L. R., 19 Bom., 80
I. L. R., 20 Bom., 565

See FRAUD—EFFECT OF FRAUD.
[I. L. R., 2 Mad., 264
B. L. R., Sup. Vol., 345

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION AND RIGHTS OF PURCHASERS.

See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

See HUSBAND AND WIFE.
[I. L. R., 1 All., 772

See CASES UNDER LIMITATION ACT, 1877, ART. 12.

See CASES UNDER LIMITATION ACT, 1877, ART. 138.

See LIMITATION ACT, 1877, ARTS. 166, 167 . . I. L. R., 9 Bom., 468
[I. L. R., 5 Calc., 331
I. L. R., 5 Mad., 113

See CASES UNDER LIS PENDENS.
[I. L. R., 13 Mad., 504
I. L. R., 11 Bom., 473

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY.

See CASES UNDER ONUS OF PROOF—SALE IN EXECUTION OF DECREE.

See PLEADER—PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.
[4 B. L. R., A. C., 181
I. L. R., 10 Mad., 111
I. L. R., 15 Mad., 389

SALE IN EXECUTION OF DECREE—*continued.*

See PRE-EMPTION—RIGHT OF PRE-EMPTION . I. L. R., 1 All., 272, 277
[6 N. W., 243, 272
7 N. W., 97, 281
I. L. R., 2 All., 850
I. L. R., 3 All., 112, 827
15 W. R., 455

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 1 All., 353, 547
[I. L. R., 4 Calc., 925
22 W. R., 169
I. L. R., 2 All., 451
I. L. R., 26 Calc., 727

See CASES UNDER RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

See SHERIFF—SALE BY SHERIFF.
[I. L. R., 27 Calc., 264

See TRANSFER OF PROPERTY ACT.

1. PLACE OF SALE.

1. ———— **Place of holding the sale**—*Sale of moveable property in execution of decree—Practice.*—Under the Code of Civil Procedure (Act XIV of 1882), it is intended that a sale of moveable property attached in execution of a decree should ordinarily be held in some place within the jurisdiction of the Court ordering the sale. Good and sufficient reasons must be shown for directing otherwise. Where the only ground urged for directing a sale outside the Court's jurisdiction was that the property would probably fetch a better price, and it was found by the Court that a fair sale could be had on the spot,—*Held* that no sufficient reason was shown for departing from the usual practice. LAKSHMIBAI *v.* SANTAPA REVAPA SHINTRE
[I. L. R., 13 Bom., 22

2. PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER.

2. ———— **Obligation to make good the sale out of subsequently-acquired interest**—*Vendor and purchaser.*—The doctrine—that where a person sells property of which he is not the owner, but of which he afterwards becomes the owner, he is bound to make good the sale to the purchaser out of his subsequently-acquired interest—does not apply to a case where the sale was made through the Court at the instance of an execution-creditor, and was therefore compulsory. ALUKMONEE DABEE *v.* BANEE MADHUB CHUCKERBUTTY
[I. L. R., 4 Calc., 677 : 3 C. L. R., 473

3. OBJECTION TO SALE.

3. ———— **Dispossession of third party in execution**—*Resistance or obstruction by stranger on delivery to auction purchaser—Civil Procedure Code, 1859 s. 269.*—There was no provision in the Civil Procedure Code, 1877, similar to that contained

SALE IN EXECUTION OF DECREE —*continued.*

3. OBJECTION TO SALE—*concluded.*

in s. 269 of Act VIII of 1859, which enabled the Court executing a decree to inquire into a complaint made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree; and therefore the only remedy of a person so dispossessed was by regular suit. *A*,

BROJONATH GHOSE

[I. L. R., 3 Calc., 729 : 1 C. L. R., 517

This omission is now rectified, and under the Civil Procedure Code, 1882, the Court has power to make an inquiry on the application of a third party dispossessed in execution.

4. ———— Decree, Impeachment of, by a stranger as fraudulent—*Civil Procedure Code (Act XIV of 1882), s. 287.*—In the execution of a decree ordering the sale of immoveable property, it is not competent for the Court to refuse to sell it because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by

4. STAY OF SALE.

5. ———— Stay of sale in regard to a particular property—*Other property of judgment debtor.*

6. ———— Stay of sale pending administration suit — *Mortgage decree—Right of secured creditor.*—In execution of a decree on a

SALE IN EXECUTION OF DECREE —*continued.*

4. STAY OF SALE—*concluded.*

was pending with respect to the property of his

7. ———— Tender of debt by transferee

the decree by tendering the debt and costs under s. 291 of the Civil Procedure Code, and that the executing Court was bound to accept the money and stop the sale. BEHARI LAL *v.* GANPAT

[I. L. R., 10 All., 1

8. ———— Civil Procedure Code, ss. 276, 305.—S. 305 of the Civil Procedure Code (which enables the Court in certain cases to stay the sale of immoveable property to enable the debtor to raise the amount of the decree by mortgage, lease, or private

section, nor confirm a mortgage or other alienation of

5. IMMOVEABLE PROPERTY.

9. ———— Interest in decree against mortgaged property—*Civil Procedure Code, 1859, s. 259—Sale of decree—Interest in immoveable property.*—A decree for the sale of mortgaged property was attached and sold in execution of a

JOSHI *v.* RAMCHANDRA PANDURANG JOSHI

[9 Bom., 64

10. ———————— *Decree creating charge on land—Interest in immoveable property.*—The sale of a decree charging land for its satisfaction in the course of execution-proceedings against the judgment-creditor is a sale of an interest in immoveable property. *Held* that the provisions of the Code of Civil Procedure relating to sales of immoveable

SALE IN EXECUTION OF DECREE —*continued.*

5. IMMOVEABLE PROPERTY—*concluded.*

property will apply to such sale. BHAWANI KUAR *v.* GULAB RAI . . . I. L. R., 1 All., 348

MOBKOONISSA *v.* DEWAN ALI MISTREE [4 W. R., Mis., 22

6. BIDDERS.

11. ———— Withdrawal of bid—*Civil Procedure Code, s.* 290 — It is competent to a bidder at a Court auction sale to withdraw his bid. AGRA BANK *v.* HAMLIN . . I. L. R., 14 Mad., 235

7. PURCHASERS, RIGHTS OF.

(*a*) GENERALLY.

See CASES UNDER ACCRETION—RIGHT OF PURCHASERS TO ACCRETIONS.

12. ——— What passes by sale—*Sale under money-decree—Right, title, and interest of judgment debtor*—Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. AKHE RAM *v.* NAND KISHORE . . . I. L. R., 1 All., 236

KHUB CHAND *v.* KALIAN DAS [I. L. R., 1 All., 240

BARTON *v.* BRIJONATH SURMAH . 3 W. R., 65

RAM ONOOGROHO SINGH *v.* MONTOBUN [6 W. R., 223

SETH OODEY KURRUN *v.* CHAIT RAM [2 Agra, 125

JYKISHOON SOOKUL *v.* SHUNKUR SOOKUL [3 Agra, 168

ZALIM *v.* CHOONEE LALL . . 3 Agra, 194

BHUKAN BHAIRAVA *v.* BHAIJI PRAG . 1 Bom., 19

13. ——— — *Sale under Bom.* [illegible]

14. ——— *Property sold* [illegible]

acquires by the express terms of the conveyance to him, not the presumed title of the person in possession, or the apparent title in the Collector's books.

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

but the right, title, and interest of the judgment-debtor in the property sold. MAHOMED BUKSH *v.* MAHOMED HOSSEIN [3 Agra, 171: Agra, F. B., Ed. 1874, 145

See BALUK DOSS *v.* NIMAYE CHUNDER SIRCAR [17 W. R., 511

15. ——— *Description of* [illegible]

held, unless something to the contrary appeared, that the sale was of that share and interest only. MUHAMMAD HUSAIN *v.* DIP CHAND [I. L. R., 14 All., 190

16. ——— *Sale of rights and interests in mouzah consisting of two mehals—Submersion of mehal at time of sale—Sale certi-* [illegible]

necessary and contingent right to any lands which [illegible]

No. 818 of 1885, referred to. *Fida Husain v. Kutab*

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

Husain, I. L. R., 7 All., 38, dissented from. MUHAMMAD ABDUL KADIR *v.* KUTUB HUSAIN. KUMAL-UD-DIN AHMAD *v.* KUTUB HUSAIN

[I. L. R., 9 All., 136

17. ——— *Increase of judgment-debtor's interest occurring after attachment and before sale.*—Previously to a mortgage of it, a fractional interest in certain property (which [illegible]

ment and the sale, the sons' augmented interests passed thereby. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA . . . . I. L. R., 18 Calc., 164

[L. R., 17 I. A., 201

18. ——— *Civil Procedure Code (Act XIV of 1882), s. 274, cl. (c)—Rights of purchaser of mortgage bond at sale in execution of decree.*—Where a person at an execution-sale purchases a mortgage-bond under which certain immoveable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. KASINATH DAS *v.* SADASIV PATNAIK . I. L. R., 20 Calc., 805

19. ——— *Sale of raiyat's interest—Want of zamindar's consent to alienate.*—[illegible]

alienate the house with the zamindar's consent, and such consent has not been obtained, the sale in execution conveys no rights in it to the purchaser. SHIB LALL *v.* LOCHUN SINGH . 3 Agra, Rev., 7

20. ——— *Sale of specified share—Property coming to debtor before sale.*—When there was a sale of a specified share belonging to the judgment-debtor,—*Held* that the auction-purchaser was not entitled to claim property which had before sale descended to the judgment-debtor. AZADEE *v.* AJMERE KOONWER . 1 Agra, 282

21. ——— *Interest in purchase-money—Civil Procedure Code, 1877, s. 266—Property not subject to attachment and sale.*—The purchaser at a sale in execution of a decree of the right or interest which the vendor of immoveable [illegible]

UDDIN KHAN *v.* MAJLIS RAI I. L. R., 3 All., 12

22. ——— *Right to mesne profits—Civil Procedure Code (Act VIII of 1859), s. 259—Certificate of sale.*—The possession, with mesne profits, of land comprised in a zur-i-peshgi lease of the year 1851 was decreed to the zur-i-peshgidars in 1860; and litigation as to their rights under the lease was carried on till 1874, when, after their deaths, it ended in favour of their representatives. [illegible]

representatives. GANESH LALL TEWARI *v.* SHAMNARAIN . . . I. L. R., 6 Calc., 213

23. ——— *Life-interest in* [illegible]

issued in the Supreme Court against the property of the testator. The sale therefore passes nothing to the purchaser. TOKAI SHEROR *v.* DAUOD MULLICK FUREEDOON PEGLAR

[4 W. R., P. C., 87: 6 Moore's I. A., 510

24. ——— *Sale of legacy under writ against executor.*—A seizure and sale by the Sheriff of the amount of a legacy under a writ against the executor, declared invalid in the absence of proof of payment extinguishing the legatee's interest. LAZAR *v.* COLLA RAGAVA CHETTY

[5 W. R., P. C., 126: 2 Moore's I. A., 83

25. ——— *Right and interest of proprietor of resumed revenue-paying estate.*—By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser. DOL GOBINDMONY DEBIA *v.* IMDAD ALI . . . . 5 W. R., 170

26. ——— *"Right, title, and interest" of a judgment-debtor in a partly-executed decree—Possession of land attached under Beng. Reg. V of 1812, s. 26.*—A decree of the year 1843 awarded to persons, afterwards represented by the respondents, the possession of a moiety of a talukh which had been since 1837, and remained till 1866, under attachment by the Collector in virtue of an order made under Regulation V of 1812. The Court

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

which granted the decree, intending to execute it approved the proceedings of an Ameen purporting to put the decree-holders into constructive possession of a certain number of mouzahs of the talukh. In 1850 the appellants, in execution of a decree for money obtained by them against the respondents, purchased at a sale, amongst other things, their "right, title, and interest" in the decree of 1843 *Held* (affirm-

ESWARI DABIA GRISHCHUNDER CHUCKERBUTTY v. BISESWARI DEBIA

[I. L. R., 6 Calc., 243: 7 C. L. R., 420

27. ——— *Sale of right, title, and interest of zamindar—Impartible primogenitary zamindari—Interest taken by purchaser.*—In 1873 and 1876, portions of an impartible primogenitary zamindari, which were in the possession of a lessee from the zamindar, were attached and brought to sale in execution of decrees against the zamindar. The purchase-money was very inadequate as the price of the full ownership of the property (subject to the lease), but what was sold according

sion.
purcha-
ment-d
YASAMI

28. ——— *Sale of rights of deceased debtor whose representatives hold certifi-*

[14 W. R., 448

RAJKRISTO SINGH v. BUNGSHEE MOHUN

[14 W. R., 448 note

29. ——— *Sale of zamindari rights—Building appurtenant to zamindari rights.*—The "rights and interests" of a zamindar in a certain village were sold in execution of a decree. At the time of the sale a certain building was his property *qua* zamindar. *Held* that, in the absence of

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

30. ——— *Sale of house and lands to different purchasers—Decree-holder, Purchase of land by, and sale of house to, third person.*—Where a decree-holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party,—*Held* that he had purchased the land on which the house stood, subject to the right of the person who bought the house to have it continued there. MOOKTA SOONDUREE CHOWDHRAIN v. MUTHOORANATH GHOSE . . . . . 22 W. R., 209

31. ——— *Sale of property with incumbrances—Right, title, and interest of debtor.*—The purchaser at a Court's sale buys only the right, title, and interest of the debtor, burdened with all valid liens such as a previous san mortgage. *Mathuradas Ranchoddas* v. *Kalsa Khu-*

32. ——— *Interest adverse to judgment-debtor—Effect of sale—Incumbrances by debtor after attachment.*—Under an execution

DEONATH SANNIAL v. RAMKUMAR GHOSE. TARAKCHANDRA BHUTTACHARJEE v. BAIKANTNATH SANNIAL . I. L. R., 7 Calc., 107: 10 C. L. R., 281 [L. R., 8 I. A., 65

BHUGOBAN CHUNDER DOSS v. LALLA THAKOOR PERSHAD . . . . W. R., 1864, 359

33. ——— *Sale free of decree holder's interest—Reservation of rights.*—When a judgment-debtor's property is sold at the instance of the judgment-creditor, the sale, whether directed by the decree or not, must be a sale free of the judgment-creditor's rights in the property, unless these are reserved. DOOLEE CHUND v. OOMDA BEGUM . . . . . . 24 W. R., 263

See DULLAB SIRKAR v. KRISHNA KUMAR BAKSH [3 B. L. R., 407: 12 W. R., 303

34. ——— *Prior right of former purchaser at unconfirmed sale—Laches.*—The purchaser at a Court's sale buys only the then existing right, title, and interest of the judgment-debtor, and therefore ordinarily takes, subject to the

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued*

35. ———— **Effect of sale**—*Right of purchaser as compared with purchaser by private sale—Right as against charges on estate sold.*—A purchaser at a judicial sale is in a position different from that of a mere representative of the old proprietor, or of one who comes in by a voluntary sale made by the latter. A judicial sale transfers to the purchaser the property of the judgment-debtor against the debtor's will, and places the purchaser in a higher position than that which the judgment-debtor, by any private alienation, could confer on him. Such

NATH . . . . . . 2 N. W., 38

36. ———— ———— *Purchase subject to decree for sale—Incumbrance.*—A decree-holder having attached certain property in the execution of a decree, *R* appeared as an objector. The decree-holder was referred to a civil suit, and obtained a decree for the sale of the property in satisfaction of the former judgment-debt. *A* then sued the judgment-debtor for the return of certain alleged consideration money and obtained a decree, in execution of which he brought to sale and became purchaser of the same property of which the sale had been decreed as above mentioned. *Held* that *N*

See SOORAJ BUKSH *v.* RAMJEEAWUN [4 N. W., 5

37.— ———— ———— *Fraudulent alienations before decree*—An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. BAICHOO *v.* HOWARD . . . . 3 Agra, 15

DEWAN ROY *v.* RIDDELL . 9 W. R., 521

38. ———— ———— *Fraudulent award, Right of purchaser to contradict.*—The *locum tenens* of a purchaser at a sale in execution of a decree is not bound by an award in fraud of the decree to which the judgment-debtors were parties. ALFATUN *v.* RAO KARAN SINGH . 7 N. W., 362

39. ———— ———— *Right of pur-*

any deed which had been previously made, even it might be by the judgment-debtor himself. LALLA RAM SURUN LALL *v.* LOKEBAS KOOER [18 W. R., 39

40. ———— ———— *Right to set aside patni—Mortgage—Covenant not to alienate.*—*A* gave a mortgage to *B* of certain property as a security for money lent, and covenanted not to alienate the property by gift, ijara, patni, or otherwise, by which loss might be caused to the existing actual assets of the property *A* subsequently granted a patni to *C*. *B* obtained a decree against *A* for the amount of the loan, and the property was sold in default of payment. *D* was the purchaser at the auction-sale. *Held* that *D* could maintain his suit against *C* to set aside the patni and for possession. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . . . 1 B. L. R., A. C., 152

S. C. BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM . . . . . 10 W. R., 151

(*b*) EASEMENTS.

41. ———— **Right to easements.**—The rule that the right to easements goes with the

(*c*) EMBLEMENTS.

42. ———— **Right to emblements**—*Mortgage, Sale under.*—On the 14th of July 1876, *B* obtained a decree against *D* directing *D* to pay the amount advanced upon a mortgage of *D*'s lands within six months from the date of decree, or, in

43. ———— ———— *Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.*—A mortgagee in possession sued on his mortgage, and having obtained a decree brought the land to sale in execution: and the execution-purchaser was placed in possession. *Held* the mortgagee was not entitled to recover from the execution-purchaser the value of the then standing crop. RAMALINGA *v.* SAMIAPPA . I. L. R., 13 Mad., 15

(*d*) RENT.

44. ———— **Right to rents**—*Rents paid for former proprietor after sale—Notice of title*

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

of purchaser.—The purchaser of a zamindari sold in execution of a decree is entitled to all the rents accruing due from the date of his purchase; and if the tenants or raiyats, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner. COLLECTOR OF RAJSHAHYE *v.* HURSOONDERY DEBIA

[W. R., 1864, Act X, 6

45. ———— Apportionment of rents—*Purchaser of share of estate.*—A purchase at a sale in execution of a decree of one of several estates let in one patni is not bound by any agreement between the patnidar and other zamindars regarding their shares of the entire patni rent. Nor can he claim from the patnidar as his own share of the patni rent

all of the zamindars may have their fixed patni rent properly apportioned among the several zamindars by a civil suit in which all the zamindars should be parties. PORESH NATH ROY *v.* BISHROOP DUTT

[W. R., 1864, Act X, 16

(*e*) REVERSIONARY INTEREST.

46. ———— Reversionary right of grantor—*Property liable to attachment and sale—Grant to Hindu widow for maintenance for life—Act VIII of 1859, s. 205—Civil Procedure Code, s. 266 (k).*—One *N*, the sole owner of a certain village, had a son *J*. *J* had two wives. By his first wife he had a son *U*. *J*'s second wife was *G*, by

was contended that the interest of *U* in the land at the time of the sale of the village by auction was in the nature of a mere expectancy and therefore could not be sold and was not sold. *Held* that *U* gave to *G* the usufruct of the land for her life in lieu of her maintenance; that after the gift the interest of *U* in the land was of the same character and carried with it the same consequences as the

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*concluded.*

reversion, which the lessor would have for land leased for life or years, and analogous to the right which a

zool Husain Khan v. *Raghunath Pershad*, 7 *B. L. R.*, 186 14 *Moore's I. A.*, 40, distinguished. KACHWAIN *v.* SARUP CHAND

[I. L. R., 10 All., 462

(*f*) STRIDHAN

47. ———— Malabar Law—*Personal decree against karnavan—Civil Procedure Code, s. 335.*—*A* sued for possession of certain shops belonging to a Malabar tarwad, which had been attached in execu-

order of rejection was not appealed against for one year. Respondents Nos 1 to 4, the husbands of the persons who put in the objection petition, were

v. MAHMAVU . . I. L. R., 10 Mad., 50?

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD.

48. ———— Subject of purchase—*Certificate of sale, Description in—Obligation of purchaser to see that certificate is correct.*—It is the

v. GOSTO BEHARY DEY . . 26 W. R., 104

49. ———— *Certificate of*

50. ———— Subject of sale—*Discrepancy between notification of sale and sale certificate—Right of purchaser.*—Where on an execution sale there is a discrepancy between the conditions in the notification of what is to be sold and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in

SALE IN EXECUTION OF DECREE —*continued.*

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*continued.*

dealing with the conflicting claims of innocent third

arrears of which the decree had been obtained. A

SEN *v.* GOBIND CHUNDER MOZUMDAR

[1 C. L. R., 460

51. ———— *Misdescription of tenure sold—Right of purchaser.*—*A*, in satisfaction of a decree against *B*, caused the sale of a tenure, styling it a jote-jumma. *C*, the superior zamindar, purchased the tenure as such for R900;

possession. *A* then sued for rent under Act X of 1859, when *C* intervened as in enjoyment of the

chaser for a valuable consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence HURO NATH ROY *v.* MOTHOORA NATH ACHARJEE

[7 W. R., 4

52. ———— *Description in notification of sale—Sale under mortgage-decree—Vendor and purchaser.*—The proprietors of a talukh and mehal called B, assessed with revenue at R6,800 4-7, to which certain lands which had been

SALE IN EXECUTION OF DECREE —*continued.*

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*concluded.*

jumma R6,800-4-7," but afterwards refused to perform the contract, and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talukh B, jumma R6,800-4-7," and the decree which the purchasers obtained for the specific performance of the contract referred to its subject-matter in similar terms. *Held*

mehal B, exclusive of the jumma of the alluvial mehal, to exclude the latter from the mortgage, the entry of the jumma being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to the plaintiffs passed the alluvial mehal, the words "the entire talukh B" being sufficient to include it, the entry of the jumma of mehal B in the sale contract, plaint, and decree being merely descriptive. GANPATJI *v.* SAADAT ALI

[I. L. R., 2 All., 787

9. JOINT PROPERTY.

53 ———— **Sale of joint property as if separate**—*Effect of sale—Right taken by purchaser.*

alone is acquired by the purchaser. KISHEN CHUNDER GHOSE *v* ASHOORUN . . Marsh., 647

SREEPERSHAD SURMAH BHUTTACHARJEE *v.* SHUROOPA DOSSIA . . . . 9 W. R., 452

54. ———— **Sole right of member of joint Hindu family in undivided property** —*Decree in suit for damages for tort—Costs.*—There may be a valid sale upon an execution in an action of damages for a tort, of the share of undivided family property to which, if a partition took place, a judgment-debtor would be individually entitled. Such damages in the costs recovered constitute a

55. ———— **Partnership property**—*Sale-decree against one of several partners in mercantile*

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

partner in the firm, to recover possession of the property,—*Held* that the plaintiff was in no better position than a purchaser at a sale of partnership property made in execution of a decree against a single partner, and that he could not be allowed to effect a partial partition, which the judgment-debtor, to whose right he succeeded, would not have been entitled to obtain All that the plaintiff could do was to bring

See KESHAV GOPAL GINDE *v.* RAYAPA [12 Bom., 165

56. ———— Property of co-parceners—*Share of one of several co-parceners—Undivided Hindu family—Unascertained share, Purchase of* —In the Bombay Presidency the share of one of the co-parceners in a Hindu undivided family in the ancestral estate may before partition be seized and sold in execution for the separate debt in his lifetime. The purchaser of such an unascertained share cannot, before partition, insist on the possession of any particular portion of the undivided family estate, and he takes any such share subject to the prior charges or incumbrances affecting the family estate or that particular share. The attachment of a co-parcener's share in the family property under an

in all other parts of the family property UDARAM SITARAM *v.* RANU PANDUJI . . 11 Bom., 76

57. ———— *Attachment and sale of the interest of one of several co-parceners in the undivided estate—Mortgage by one co-parcener.*

purchaser could take no more than the share of the

58

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

commented on. RAJANIKANTH BISWAS *v.* RAM NATH NEOGY . . I. L. R., 10 Calc., 244

See ESHAN CHUNDER BANERJEE *v.* NUND COOMAR BANERJEE . . . 8 W. R., 239

59. ———— Property of joint tenure-holders—*Decree against one of several joint sharers—Effect of sale under such decree* —In exe-

See NITAYI BEHARI SAHA PARAMANICK *v.* HARI GOVINDA SAHA . . I. L. R., 26 Calc., 677

and ANUNDA KUMER NASKAR *v.* HARI DASS HALDAR . . . I. L. R., 27 Calc., 545

60. ———— Property of joint family—

61. ———— *Personal decree against karnavan of tarwad—Right of purchaser.* —If, in execution of a money-decree obtained against a person who happens to be the karnavan of a Malabar tarwad, the tarwad property is attached and sold, a purchaser at an auction-sale obtains nothing, and in such a case the question whether the purchase was made *bonâ fide* and for value is not material. ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA . . I. L. R., 5 Mad., 201

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

debt incurred for immoral purposes of the kind mentioned by *Yajnavalkya*, Ch II, s. 48, and *Manu*, Ch. VIII, sloka 159, and one which it would not be their pious duty as sons to discharge. If, however, the decree, from the form of the suit, the character of the debt recovered by it, and its terms, is to be interpreted as a decree against the father alone and personal to himself, and all that is put up and sold thereunder in execution is his right and interest in the joint ancestral estate, then the auction-purchaser acquires no more than that right and interest,—*i e.*, the right to demand partition to the extent of the father's share. In this last-men-

estate, or, if he obtains possession, may maintain a

198, *Suraj Bunsi Koer* v. *Sheo Persad Singh*, *I. L. R.*, 5 *Calc.*, 148, *Bissessur Lall Sahoo* v. *Luchmessur Singh*, *L. R.*, 6 *I A.*, 233; *Muttayan Chetti* v *Sangili Vira Pandia Chinnatambiar*, *I. L R.*, 6 *Mad.*, 1; *Hurdi Narain Sahu* v. *Rooder Perkash Misser*, *I L R.*, 10 *Calc.*, 626, *Nanomi Babuasin* v *Modun Mohun*, *I. L. R.*, 13 *Calc.*,

76. ——— *Son's liability for father's debt—Sale of ancestral property—Bona fide purchaser.*—By the sale of ancestral property in execution of a mere money-decree against the

chaser is a stranger or the decree-holder himself. A purchaser at a Court sale cannot set up the title of a *bond fide* purchaser for value without notice. *Lakhmichand Walchand* v. *Kastur Bechar*, 9 *Bom.*, 60, and *Sobhagchand Golabchand* v. *Bhaichand*, *I. L. R.*, 6 *Bom*, 192, followed. BHIKAJI RAMCHANDRA OKE v YASHVANTARAV SHRIPAT KHOPKAR [I. L. R., 8 Bom., 489

77. ——— *Mitakshara law —Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.*—*A*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate, to which he and his minor son *B* were jointly entitled as members of a joint Hindu family,

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

A instituted proceedings, under s 256 of Act VIII of 1859, to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of *A*, but virtually on behalf of the minor *B*, under the control and direction of the Collector, who had taken charge of his estate, and appointed a manager under Act XL of 1858 These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and *C* took possession of the property. In 1877 a suit was instituted on behalf of *B*, by the manager appointed by the Collector, against *C* and *A* to recover possession of the property, on the ground (1) that when it was sold it was not the property of *A*, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* (1) that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under s. 256 of Act VIII of 1859, was no bar to the institution of the present suit on his

estate, yet such share or interest can be taken in execution and sold by the holder of a decree against him. COLLECTOR OF MONGHYR v HURDAI NARAIN SHAHAI . I. L. R., 5 Calc., 425: 5 C. L. R., 112

78. ——— *Civil Procedure Code (Act VIII of 1859), s. 264—Execution of* ... *ided family by* ... *family estate,* ... *such interest,* ... *ile, consisting only of the rents and profits then uncollected.*—On

chaser. The proclamation of sale purported to relate to (*a*) only; and between the dates of proclamation and the auction-sale the zamindar died. On the argument that, this having given rise to an ambiguity, the Court must be understood to have sold all that it could sell, and that, under the circumstances, it could sell, and was bound to sell (*b*); because the debts, the subject of the decrees under execution, not having been incurred by the late zamindar for any immoral purpose, the entire zamindari formed assets for their payment in the hands of his son,—*Held*

SALE IN EXECUTION OF DECREE
—continued.

9 JOINT PROPERTY—*continued.*

that the question of what the Court could or should have sold had not arisen. All that required decision was what the Court had sold. If (*a*) only was put up *for sale, then that interest only could have been*

79. ——————— *Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, Effect of.*—In 1858 *S* mortgaged certain ancestral property to the first defendant for a term of nine years. In 1864, *S* being then dead, the defendant sued *R*, the son of *S*, to recover the money-debt, and obtained a decree against the estate of the deceased. The land in question was thereupon attached and sold on the 13th August 1873, subject to defendant's mortgage-lien, and was purchased for the defendant by his cousin. The certificate of sale was drawn up in

plaintiff sued the defendant to redeem the property. The Court of first instance rejected his claim. On appeal, the lower Appellate Court reversed that decree, and remanded the case for re-trial. Against this order of remand, the defendant appealed to the High Court. *Held*, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely *S*'s interest. By his purchase the defendant was to be regarded as having bargained for, and purchased the entire interest in, the land. *Nanomi Babuasin v. Modhun Mohun, I. L. R., 13 Calc., 21,* followed. SAKHARAM SHET *v.* SITARAM SHET

[I. L. R., 11 Bom., 42

80. ——————— *Joint Hindu family—Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money-decree, Sale in execution of—Sale certificate referring to rights and interest of father only in joint family property—Suit by sons for declaration of right to their shares—Form of decree.*—If a person in possession of property which originally belonged to the members of a joint Hindu family, of whom the father was one, can produce as

restore to the other members of the joint family their interests, which had not, upon the face of the sale-certificate, passed by the sale. The father and manager of a joint Hindu family executed a deed whereby he hypothecated certain zamindari property, covenanting to put the mortgagee in proprietary possession thereof if the debt should not be paid on a certain date. This transaction afterwards turned *out to be fraudulent on his part as he had no interest* in this property, and the obligors then sued him to recover the debt upon the personal obligation, and obtained a money-decree, in execution whereof the right, title, and interest of the judgment-debtor in certain joint family property was notified for sale, and a sale took place at which, upon the face of the sale certificate, only that right, title, and interest was sold. The auction purchasers, having obtained possession, asserted a right to the whole of the joint family estate, upon the ground that, as the judgment-debtor was father of the family, the decree must be assumed to have been passed against him in his capacity as karta, and that the other members of the family were therefore bound by the decree and sale. The other members brought a suit to recover possession of their shares. *Held* that, inasmuch as upon the terms of the sale-certificate no thing more passed to the defendants at the sale than the right, title, and interest of the father, the plaintiffs were entitled to maintain the suit and to have a decree declaring them entitled to the whole property, subject to a declaration that the defendants as auction-purchasers of the father's share, might come in and claim a partition of that share out of the joint estate. *Per* MAHMOOD, *J.*, that the plaintiffs were entitled to succeed on the further ground that the debt for which the decree against the father was passed was immoral within the meaning of Hindu law. *Simbhunath Panday v. Golap Singh, L. R., 14 I. A., 77 ; I. L. R., 14 Calc., 572 ; Deendyal v. Jugdeep Narain Singh, L. R., 4 I. A., 247 ; I. L. R., 3 Calc., 198*, and *Hurdey Narain Sahu v. Ruder Perkash Misser, L. R., 11 I. A., 26 ; I. L. R., 10 Calc., 626,* referred to. RAM SAHAI *v.* KEWAL SINGH . . I. L. R., 9 All., 672

81. ——————— *Decree against father—Sale of ancestral estate in execution of* . . . *Son's rights and liabilities.—A* ... ebtors in ... ourt sale ... *B* and ... ndivided ... —*B* and ... ng also joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale; but he did not prove that the debt for which the decrees were passed was immoral, and it appeared that *A* had bargained and paid for the entire estate. The plaintiff was a minor at the time of the sale, and *B* was now the managing member of the family. *Held* that the Court sale was binding on the plaintiff's share. *Nanomi Babuasin v. Modhun Mohun, L. R., 13 I. A., 1 ; I. L. R., 13 Calc., 21,* discussed and followed. KUNHALI BEARI *v.* KESHAVA SHANBAGA . . . . I. L. R., 11 Mad., 64

82. ——————— *Joint family—Mortgage by father and eldest son—Death of*

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execution—Subsequent suit by minor to set aside sale.—In 1862 *R* and his son *A* mortgaged the property in dispute to *B*. In 1833 *R* died, leaving a widow *S* and two sons, *viz.*, *A* and *P*, a minor. In 1866, *A* and *S*, the latter of whom acted for herself and as guardian of her minor son *P* settled the account with *B*, the mortgagee, obtained a fresh advance, and passed a fresh mortgage-bond to him. In 1868 *A* died. In 1869 *B*'s assignee filed a suit upon the mortgage, and obtained a decree against the mortgaged property against *S* both as guardian of the minor *P* and also against her in her individual capacity. At the Court-sale held in execution of this decree, *D* purchased the property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *B*'s purchase was invalid as against him, he having been a minor at the time of the Court-sale. *Held*, upon the merits, that the debt for which the decree was passed, being a family and ancestral debt, was binding upon the whole family, including the plaintiff, who was therefore not entitled to disturb the execution-purchaser. DAJI HIMAT *v.* DHIRAJRAM SADARAM

[I. L. R., 12 Bom., 18

83. ——————————— *Joint family—Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution-proceedings.*—In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property, or only his interest in it, passes by the sale, is to inquire what the parties contracted about in the case of a conveyance or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money decree. In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test. The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person who had purchased it at an auction-sale held in execution of a money decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale, and the lower Courts decided in their favour. On appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. KAGAL GANPAYA *v.* MANJAPPA

[I. L. R., 12 Bom., 691

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

84. ——————————— *Sale for debt of father—Suit by son to set aside sale—Failure to prove immoral purpose of debt.* A sale in execution [illegible]

been incurred by him for any immoral or illegal purpose. *Held* that the impeachment of the debt failing the suit failed; and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu v. Rudr Perkash Misser, I. L. R., 10 Calc., 626; L. R., 11 I. A., 26* (where the sale was only of whatever right, title, and interest the father had in property), distinguished. MINAKSHI NAYUDU *v.* IMMUDI KANAKA RAMAYA GOUNDAN . I. L. R., 12 Mad., 142

[L. R., 16 I. A., 1

85. ——————————— *Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Transfer of Property Act, s. 99—Sale of mortgage property in execution of decree on a money bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money-bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money-bond; and having obtained a personal decree against [illegible]

not a party to the decree. *Held* further *per* KERNAN, *J.*, that the sale in execution was invalid under the Transfer of Property Act, s. 99. SATHUVAYYAN *v.* MUTHUSAMI . I. L. R., 12 Mad., 325

86. ——————————— *Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—* [illegible]

decree as well as a sale certificate expressed only the father's right, the *primâ facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract, but supported. The enquiry in recent cases regarding the liability of

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

the estate of co-sharers in respect of transfers made

he was buying. Each case must depend on its own circumstances *Upooroop Tewary v Lalla Bandhjee Suhay, I. L. R., 6 Calc., 749,* distinguished SIMBHUNATH PANDE *v.* GOLAP SINGH

[I. L. R., 14 Calc., 572
L. R., 14 I. A., 77

87. ———— *Hindu law—Joint family—Court-sale of right, title, and interest of the father, Effect of*—One *R* and his sons were members of an undivided family. In execution of certain money decrees passed against *R*, the lands in dispute were sold to various persons, from whom they were afterwards bought by the defendant. In 1875 *R* died and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service vatan lands and inalienable, and that the execution-sales affected nothing except *R*'s life-interest, and that, on *R*'s death, they (the plaintiffs) became entitled. They also contended that, even if the Court should find the lands were not service vatan lands, they were, at all events, ancestral property, and that the plaintiffs'

mixed question of law and fact to determine what the Court intended to sell and what the purchaser expected to buy. APPAJI BAPUJI *v.* KESHAV SHAMRAV. KESHAV SHAMRAV *v.* APPAJI BAPUJI

[I. L. R., 15 Bom., 13

88. ———— *Son's interest in ancestral property—Death of son before sale.*—Where the son died between attachment and sale, the judgment creditor was held to have no property in what he had attached, so as to entitle him to sell it in execution of his decree. GOOR PERSHAD *v.* SHEODEEN . . . . . 4 N. W., 137

89. ———— *Right of purchaser*

of *A*, as well as to his present possessory right,

MACPHERSON, *J.*, gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of *A*. KISTO DHONE GANGOOLY *v.* RADUTTY DOSSEE

[1 Ind. Jur., N. S., 324

90. ———— *Interest of co-widows in estate undivided.*—The co-widows of one and the same husband take a joint interest in one undivided estate. *Semble*—The interest of one or two such widows cannot be sold in execution of decree. KATHAPERUMAL *v.* VENKABAI

[I. L. R., 2 Mad., 194

91. ———— *Right of purchaser under joint decree—Error in certificate.*—Where a joint decree for contribution which had been passed against a Hindu widow and the reversioner

[10 W. R., 529

10. MORTGAGED PROPERTY.

92. ———— **Mortgagor, Interest of**—*Sale under money-decree—Sale under decree enforcing mortgage.*—There are substantial differences between a sale in execution for a money-decree and a sale

mortgagor was, under any circumstances, competent to create, and did create at the time of the mortgage. PONNAPPA PILLAI *v.* PAPPUVAYYANGAR

[I. L. R., 4 Mad., 1

93. ———— Interest taken by pur-

94. ———— *Proclamation of*

95. ———— *Purchaser of mortgaged property, Rights of—Right to set aside incumbrances*—A purchaser of property sold under a decree in favour of a mortgagee cannot claim to set aside, as prejudicial to its rights, a tices

SALE IN EXECUTION OF DECREE —*continued*

10. MORTGAGED PROPERTY—*continued.*

pottah granted by the mortgagee when those rights were not in existence. It cannot be maintained that the purchaser of property sold under a decree in favour of a mortgagee takes the property free from such lease or farm as the owner might have found to be expedient or convenient, provided the value of the property was not impaired and the operation of the mortgagee's lien not impeded. BANI PERSHAD *v.* REET BHUNJUN SINGH . . 10 W. R., 325

96. ———— *Conditional sale executed before sale of execution, but after mortgagee's decree.*—A purchaser under a decree for sale obtained by the mortgagee under a simple mortgage does not purchase subject to a conditional sale executed by the mortgagor after the prior mortgagee had obtained a decree of sale, but before the property was actually sold. RAJNARAIN SINGH *v.* SHEERA MEAN . . . . . . 7 W. R., 67

97. ———— *Nature of mortgagee's security—Sale by mortgagee—Rights of* ... *de, 1859,* ... becomes ... ze in the ... te of the ... te of the

sale, the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in

of the above description, the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to be sold,—*i e*, the right, title, and interest which the judgment-debtor had in the property at the time of the mortgage. KASANDAS LALDAS *v.* PRANJIVAN ASHARAM [7 Bom., A. C., 146

BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM [10 W. R., 151

S. C. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . . . 1 B. L. R., A. C., 152

98. ———— *Right to redeem.*—Where a decree-holder sells a mortgagor's rights and interest in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. LALLA JOOGUL KISHORE LALL *v.* BHUKHA CHOWDHRY [9 W. R., 244

99. ———— *Right of purchaser—Rights of respective mortgagees.*—A mortgage made by way of security for money advanced remains a mortgage until the debt is satisfied, and the mortgagee-creditor has every right to sue to obtain a decree and sell that which is held by him as security for his money, without any regard to the proceeding of any other subsequent mortgagee or purchaser. A ...

A subsequent purchaser, by payment of an earlier mortgage, and obtaining a decree for the money so paid, does not acquire any rights belonging to that mortgage. His payment was a voluntary act, and his decree against his vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. DHOREE ROY *v.* BULDEB NARAIN SINGH W. R., 1864, 345

100. ———— Purchase by mortgagee—*Lien of mortgagee—Liability of purchaser—In-* ...

peshgi pottah in favour of defendant, who obtained possession by paying to plaintiff the money due under the first zur-i-peshgi lease. Plaintiff then sued *F* alone on his bond and obtained a decree, in execution of which he sold a share in *B* and purchased it himself. In a suit for possession and to have the superiority of his lien declared over defendant's zur-i-

purpose is concerned. BEKON SINGH *v.* DEEN DYAL LALL . . . . . . 24 W. R., 47

101. ———— Right of purchaser of mortgaged property—*First and second mortgages.*—Where a mortgagee sues upon his mortgage bond and

shown to be invalid and the second mortgage to have priority. DOOLAL CHUNDER DEB *v.* GOLUCK MONEE DEBIA . . . . . 22 W. R., 380

102. ———— *Effect of sale—Parties.*—The usual mode, in the mofussil Civil Courts, of selling in mortgage suits "the right, title, and interest" of the mortgagor or his heir, is not

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

correct, if deemed to be his right, title, and interest at the time of the sale The intention of the Court is

gaged certain immoveable property to *A R* (defendant No 1) for R400 on the 7th May 1865 On the death of *U*, the mortgagee *A R* brought a suit (No. 311 of 1871) against his widow, *K* (defendant No. 2), but did not make his (*U's*) children (who were minors) parties to it. On the 28th July 1871 *A R* obtained a decree for R460, being the amount of principal and interest due on his mortgage, with further interest from the date of suit to date of payment.

answer of defendants Nos. 2, 3, 4, and 5 (respectively the widow, two sons, and a daughter of *U*) substantially was that the Court sale did not affect the rights of defendants Nos. 3, 4, and 5, as they had not been

subsequently private sale by the auction-purchaser

sales having been found to be unimpeachable in all other respects, and that the defendants Nos. 3, 4, and 5 were only entitled to the same relief which they

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

would have obtained if they had been made parties to that suit—*viz*, the right of redeeming the property by paying off the mortgage. The High Court accordingly reversed the decree of the District Judge, and directed the defendants Nos 3, 4, and 5 to pay to the plaintiffs within six calendar months from date, the sum of R460, with interest on the principal (R400) from date of the institution of suit No. 311 of 1871 until payment. The Court further directed that, in default of payment, the mortgage should be foreclosed, and defendants Nos. 3, 4, and 5 precluded from redeeming the property which should be delivered up to the plaintiff. ABDULLA SAIBA *v.* ABDULLA . . . I L R., 5 Bom., 8

See also SHRINGAPURE *v* PETHE [I. L. R., 2 Bom., 662

103. ———— *Decrees enforcing mortgages — Priority.* — Certain immoveable

which enforced the earlier charge was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. *Ajoodhya Pershad* v. *Moracha Kooer*, 25 *W. R.*, 254, distinguished. JANKI DAS *v.* BADRI NATH I. L. R., 2 All., 698

104. ———— *Right of prior mortgagee.*—On the 31st August 1863 *A* mortgaged

an action brought by the plaintiff to recover posses-

entitled to preference to the plaintiff's purchase in 1868. RAVJI NARAYAN *v.* KRISHNAJI LAKSHMAN [11 Bom., 139

105. ———— *Sale under mortgage for payment of Government revenue — Rights of respective purchasers* —In 1855 a decree for an account was passed in the Supreme Court of Calcutta against *A*, an executor. *A* died in 1856, and the suit, which was revived against his representatives,

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

a writ of *fieri facias* was issued, under which the property was sold by the Sheriff of Calcutta, and

other lands, for the purpose of paying the Government

was made for the purpose of paying Government

of *A*, and that *A's* representatives intended to misapply the money so advanced to them. *Greender Chunder Ghose* v *Mackintosh, I L R, 4 Calc*, 897, followed. KASSIMUNNISSA BIBEE *v.* NILRATNA BOSE [I. L. R., 8 Calc, 79
9 C L. R., 173 : 10 C. L. R., 113

106 — *Money-decree*—

decree for money, and was purchased by *C*, with notice that *L* held a decree enforcing a lien on such property Subsequently *L* applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S*. *S* sued, by virtue of such purchase, to recover possession of such property from *C*. *Held* that, inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C* had purchased the property in suit with notice of the existing lien on it

LAL *v* CHOTEY LAL . . I. L. R, 3 All., 647

107. — *Unauthorized*

nistration to her husband under Act XX of 1864 *Held* that the defendant had a lien upon the land for the amount of the mortgage debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien KUVARJI *v.* MOTI HARIDAS [I. L. R., 3 Bom., 234

108. — *Sham mortgage.*

attached the land in execution of the decree obtained

of *J* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. GOPI WASUDEV *v* MARKANDE NARAYAN BHAT . . I. L. R., 3 Bom., 30

109. — *Suit for rent after execution of mortgage-decree.*—*P* got a decree on a mortgage bond in the terms of a compromise

110. — *Sale of decree-holders' rights and interests*—

[20 W. R., 408

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

111. ——— ——— *Notice.*—*G* borrowed money from *S.* He then borrowed money from *D,* mortgaging as security the property in suit. After that he borrowed from plaintiffs, executing a bond by which he again mortgaged the same property. Subsequently plaintiffs obtained a decree by which the mortgaged property was declared liable to sale for the amount decreed, sold the property in execution, and purchased it themselves. They were disturbed from possession by defendants in execution of a rent-decree under which they ousted plaintiffs, and got their own names registered as proprietors. Plaintiffs now sued for declaration and enforcement of their rights as purchasers at the above sale. Defendants claimed as purchasers in execution of a money-decree obtained against *G* by the first creditor, *S,* alleging that they paid off the money due to the second creditor, *D,* and were entitled to hold possession, their purchase having been previous to that of the plaintiffs. *Held* that, in purchasing the rights and interests of *G,* defendants purchased his right to redeem property already subject to two mortgages, and as they purchased with full notice, they could only retain possession by paying off both mortgages. *Held* also that plaintiffs purchased not merely the equity of redemption, but *G's* rights and interests as they were when the mortgage was created subject to the mortgage held by *D,* but free from subsequent incumbrances. NARAIN SAHOO *v.* OCHOOT SAHOO . . . 14 W. R., 233

See WAJED HOSSEIN *v.* HAFEZ AHMED REZAH [17 W. R., 480

112. ——— ——— *Money-decree—Mortgage-decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 287.*—A creditor obtained two decrees against his debtor, one being a mortgage-

property in the hands of the auction-purchaser. *Held* that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien. *Held* further that

time or other,

Court of the

the auction-

v. ROGHOO-

BUR SINGH . . I. L. R., 10 Calc., 609

113. ——— *Priority.*—The

SALE IN EXECUTION OF DECREE —*continued*

10. MORTGAGED PROPERTY—*continued.*

first two bonds, he would have been clearly entitled to

made in satisfaction, *inter alia,* of the debts due on the mortgage-bonds containing the condition against alienation, passed the full proprietary right to the defendant. RAJAH RAM *v.* BAINEE MADHO [5 N. W., 81

114. ——— *Effect of sale—Estoppel.*—On 10th September 1863 *A* mortgaged a house to *B,* who registered the deed, but did not obtain possession of the premises. On 2nd July 1868 *A* mortgaged the same house to *C,* who registered the mortgage-deed and took possession of the premises. On 10th October 1868 *B* sued on his mortgage, and

brought upon the mortgage, the interest of the

[I. L. R., 5 Bom., 2

115 ——— *San-mortgage—Registration of certificate of sale—Civil Procedure Code, 1877, s. 287—Notice—Warranty of title.*—A buyer of property at an execution sale who regis-

SALE IN EXECUTION OF DECREE
—*continued.*

10. MORTGAGED PROPERTY—*continued.*

Code (Act X of 1877), notice is given to purchasers that the sale only extends to the right, title, and interest of the judgment-debtor, and that the Court

out notice. SOBHAGCHAND GULABCHAND *v.* BHAICHAND . . I. L. R., 6 Bom., 193

See LAKSHMANDAS SARUPCHAND *v.* DASRAT [I. L. R., 6 Bom., 168

and RUPCHAND DAGDUSA *v.* DAVLATRAV VITHALRAV . . . . I. L. R., 6 Bom., 495

116. ———— *Mortgage-debt payable by instalments—Money-decree obtained by mortgagee for two instalments—Sale of mortgaged*

Civil Procedure Code plainly is to impose a duty on the person applying for execution to disclose to the Court his own lien (which he must know of) in his application for sale, and on the Court the duty of specifying the same in the proclamation. Where therefore in execution of a simple money-decree obtained for some of the instalments due on his mort-

Bom., 5; and *Dhondo* v. *Raoji, I. L. R., 20 Bom.,* 290, referred to. RAMCHANDRA VITHURAM *v.* JAIRAM . . . . I. L. R., 22 Bom., 686

117. ———— *Mortgagee not in possession—Registered lease—Effect of sale in transferring property to purchaser.*—A mortgaged

into possession. In 1867 B obtained a decree upon his mortgage, and in execution attached and sold the mortgaged property. C, who had applied to have

SALE IN EXECUTION OF DECREE
—*continued.*

10. MORTGAGED PROPERTY—*continued.*

mortgage by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and

require the mortgagee to convey to the purchaser: the transfer takes place by estoppel. SHESHGIRI SHANBHOG *v.* SALVADOR VAS . I. L. R., 5 Bom., 5

118. ———— *Mortgage without possession—Right of mortgagee as against the purchaser—Difference between a mortgage valid as*

necessary to validate a mortgage in the Deccan or elsewhere in the Presidency of Bombay (except Gujarat) against a private purchaser for valuable consideration, but not against a purchaser at a Court sale. BAPUJI BALAL *v.* SATYABHAMABAI [I. L. R., 6 Bom., 490

See SHIVRAM *v.* GENU . I. L. R., 6 Bom., 515

119. ———— *Unregistered sanmortgage—Sale—Subsequent unregistered mortgage of same property—Decree on latter mortgage and*

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

sale in execution—Sale certificate registered—Priority—Interest passing on sale of mortgaged property in execution of a money-decree and of a decree in mortgage—One *H* and his sons *B* and *C* executed a san mortgage of certain ancestral property in plaintiff's favour in 1885. The mortgage was unregistered In 1886 the same property was mortgaged by *C* alone by a deed which was also unregistered. In 1889 *C's* mortgagee obtained a decree on

unregistered mortgage. *Held* that the plaintiff was entitled to a decree. His claim was superior to the defendant's. The defendant had purchased the interest which *C* had mortgaged in 1889. But that mortgage was unregistered and was therefore subject to the plaintiff's mortgage, which, although unregistered, was earlier in date The defendant, by registering his certificate of sale, could not enlarge the estate which the certificate conveyed

120. ———— *Mortgaged land subsequently sold by mortgagee in execution of a money-decree—Purchaser at such sale with notice of mortgage—Mortgagee estopped from subsequently enforcing his mortgage as against purchaser—Fraudulent concealment of lien—Registration not*

lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the mortgage, and in February 1872 obtained possession through the Court. In the meantime *G R* brought another suit upon his mortgage against his mortgagors. He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against *R*, *G*, and

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

G R to recover the lands. *Held* that the plaintiff was entitled to recover. *G R* (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s. 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment-debtors in it. By concealing his lien he had induced the plaintiff to pay full value for the property, and he could not therefore retain his lien. By his omission he was estopped from disputing the plaintiff's title. The rule, that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment debtor's interest in the property brought by the judgment-creditor to sale. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT . I. L. R., 12 Bom., 678

121. ———— *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.*—On the 21st December 1871 three of the defendants in this suit mortgaged four groves to *H*. In 1872 the plaintiffs obtained a money-decree against one *D*, and in August 1872, in execution of that decree, sold the said groves, and at the sale purchased them and also two mills which were not in dispute in this suit The decree against *D* was found to have the

the suit, which resulted in the decree under which

consistent with the principles of equity and recognized by the Transfer of Property Act. *Muhammad Samiud-din v Man Singh, I. L. R., 9 All., 125,* followed. GAJADHAR *v* MULCHAND

I. L. R., 10 All., 520

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

122. ——— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and, having obtained leave to bid at the judicial sale, purchased the property, —*Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. MAHABIR PERSHAD SINGH v. MACNAGHTEN I. L. R., 16 Calc., 682 [L. R., 16 I. A., 107

DAKSHINA MOHAN ROY v. BASUMATI DEBI [4 C. W. N., 474

123. ——— *Equities of mortgagors.*—In a suit for possession by the certificated purchaser of one-third of certain mouzahs which had been sold in execution of a decree obtained by the mortgagee against the defendant as mortgagor, it appeared that the defendant had, in a previous execution-sale at the instance of a second mortgagee of the same property, bought the same subject to his own first mortgage. The High Court held that the

[illegible]

had bought, and that the defendant had no equity to prevent it. LUTF ALI KHAN v. FUTTEH BAHADOOR [L. R., 16 I. A., 129 I. L. R., 17 Calc., 23

124. ——— *Rights of purchasers under mortgage-decree—Purchases in execution by decree-holders—Title of purchaser* [illegible]

[illegible]

Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money [illegible]

[illegible]

mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended the possession which they obtained. *Held* that the defendants, in whose [illegible]

[illegible]

widow was the real owner, had not been set up or decided in the Court of first instance. MAHOMED MOZUFFER HOSSEIN v. KISHORI MOHUN ROY. [I. L. R., 22 Calc., 909 L. R., 22 I. A., 129

125. ——— *Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*—*A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C*'s daughter and legal representative for damages sustained by him from the non payment of the purchase-money by *C*. *A* obtained a decree, and, the money not being paid as therein decreed, applied for execution, and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court, *A* bid at the Court sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage. *Held* that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A*'s position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under

[illegible]

mortgagee, and that for these amounts *A* was bound to give credit. KRISHNASAMI AYYAR v. JANAKIAMMAL . . . I. L. R., 18 Mad., 153

126. [illegible]

[illegible]

found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion and set aside the sale on the 22nd July 1892. The High Court in second appeal accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, objections were raised on the ground that the property was not liable to be sold again in execution of this decree. *Held* that the previous sale under the mortgage-decree was no bar to a fresh sale under the same decree. *Ram Autar Singh* v. *Tulsi Ram, 5 C. L. R., 227; Otter* v. *Lord Vaux, 2 K. & J., 650, and 6 DeG. M. & G., 638*, and *Lutf Ali Khan* v. *Futteh Bahadur, I. L. R., 17 Calc., 32,* referred to RAGHUNATH SAHAI SINGH *v.* LALJI SINGH [I. L. R., 23 Calc., 397

127. ——— *Transfer of Property Act (IV of 1882), s. 88—Suit for sale on a mortgage—Purchase at auction-sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagee.*

cree-holder was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh* v. *Macnaghten, I. L. R., 16 Calc., 682; Sheonath Doss* v. *Janki Proshad Singh, I. L. R., 16 Calc., 132,* and *Ganga Pershad* v. *Jowahir Singh, I. L. R., 19 Calc.,* 4, referred to MUHAMMAD HUSEN ALI KHAN *v.* DHARAM SINGH [I. L. R., 18 All., 31

128. ——— *Transfer of Property Act (IV of 1882), ss. 92 and 63—Decree for sale on a mortgage—Order absolute for sale—Civil Procedure Code (1882), ss. 291 and 310A.*—Ss. 291 and 310A of the Code of Civil Procedure, 1882, will apply to a sale held in virtue of an order absolute for sale passed under s. 89 of the Transfer of Property Act, 1882, although no power is given under that Act to postpone the operation of an order under s. 89 RAJARAM SINGHJI *v.* CHUNNI LAL . I. L. R., 10 All., 205

But *see* KEDAR NATH RAUT *v.* KALI CHURN RAM . I. L. R., 25 Calc., 703

129. ——— *Sale in execution of a decree for sale on a mortgage—Stay of sale on payment into Court of decretal amount and costs—Civil Procedure Code, s. 291—Transfer of Property Act (IV of 1882), s. 89.—Held* that s. 291 of the Code of Civil Procedure must be taken to have modified s. 89 of Act IV of 1882 when the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or when it is proved to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale. *Rajaram Singhji* v. *Chunni Lal, I. L. R., 19 All., 205,* followed HARJAS RAI *v.* RAMESHAR . I. L. R., 20 All., 354

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*concluded.*

11. DECREES AGAINST REPRESENTATIVES.

130. ——— **Liability of legal representative of deceased person**—*Right of bona fide purchaser without notice at execution-sale.*—A *bonâ fide* purchaser without notice for valuable consideration at an auction-sale is, as a general rule, entitled to protection, notwithstanding any irregularity or defect in the proceedings or decree in the suit. But when the decree is against the representative of a deceased person, the purchaser is bound to satisfy himself that the party sued as the representative of the deceased is his legal representative. The legal representative of a deceased person, though not a party to the suit, will be bound by the execution sale, if he either knowingly allowed the suit to be defended by another person claiming to be the legal representative, or if, knowing of the sale, he stood by and allowed the purchaser to pay in the belief that he acquired a good title. *Edalji Hormasji* v. *Mahalu Begum, Special Appeal No. 266 of 1869,* considered NATHA HARI *v.* JAMNI [8 Bom., A. C., 37

131. ——— **Decree against widow in representative capacity**—*Right and interest*

party was put up and sold. The advertisement of sale in one place said that the property to be sold was the property of the widow, and in another the rights and interests of the debtor. *Held* that the

S. C. ISHAN CHUNDER MITTER *v.* BUKSH ALI SOUDAGUR . . . . . . Marsh., 614

See also COURT OF WARDS *v.* COOMAR RAMAPUT SINGH . . 10 B. L. R., 294

S. C. GENERAL MANAGER, RAJ DURBUNGHA *v.* RAMPUT SINGH 14 Moore's I. A., 605 [17 W. R., 459

and SOTISH CHUNDER LAHIRY *v.* NILCOMUL LAHIRY . . . I. L. R., 11 Calc., 45

132. ——— **Property sold as right and interest of widow**—*Property wrongly described—Right of deceased debtor—Purchaser, Right acquired by.*—Where in execution of a decree in the presence of the widows of the original debtor, the

SALE IN EXECUTION OF DECREE
—*continued*

11 DECREES AGAINST REPRESENTATIVES
—*continued.*

property in dispute was sold as the right and interest of the widows.—*Held* that the auction-purchaser, under the circumstances of the case, acquired by the purchase the right and interest of the original debtor in the property, though in the sale notification those of the widows were advertised to be sold. TARAKANT BHUTTACHARJEE *v.* LUKHEE DABEA. TARAKANT BHUTTACHARJEE *v.* WISE . . 2 Hay, 8

133. ——— Interest of persons as representatives — *Property wrongly described — Civil Procedure Code, 1859, s. 203* —Where a property is described at the time of an execution sale as the property of judgment-debtors who were sued as mere representatives of a deceased judgment-debtor, *primâ facie* what is sold is the property of the [illegible]

LALLA SEETA RAM *v.* RAM BUKSH THAKOOR [24 W. R., 383

134. ——— *Contents of application for execution and of notification and proclamation of sale—Sale of interests of minor—Civil Procedure Code, 1859, ss. 212, 249* — Where an application for execution of a decree omits to give the names of all the parties as required by s. 212, Act VIII of 1859, even if it shall appear from other parts of the proceedings who those parties are, the parties named must be understood to be the parties defendants against whom the execution of the decree is sought. Parties present at a sale are not bound to refer to the decree as laid down in *Ishan Chunder Mitter v. Buksh Ali Soudagur, Marsh., 614*, nor must they be considered as knowing its contents unless they are stated in the notification of sale. The proclamation and notification under s. 249 are intended to inform persons what is to be sold, and to give the names of the parties defendants whose rights and interests in it are to be sold. In the case of a sale in execution of a decree against a party as a representative of a deceased person, the proper course is to give in the description of the property to be sold the name of the defendant against whom the decree was obtained, and, in describing what was to be sold, to say the right, title, and interest of the defendant as the representative of the deceased. A guardian has no right or interest in a minor's property, and the Courts ought to be extremely careful with regard to allowing the property of minors to be sold in execution of a decree. The purchaser in this case was held to have acquired under his purchase no title to the property of the minor, the property not having been described as the property of the minor. ABDOOL KUREEM *v.* JAUN ALI . . 18 W. R., 56

135. ——— *Guardian not properly appointed—Act XX of 1864—Parties—Mad. Reg. V of 1804—Form of decree.*—J (defendant No. 1) brought a suit (No 374 of 1861) against the plaintiff's father *G*. On a mortgage-bond, dated the 2nd April 1856, *G* having died before any decree was passed, his widow (plaintiff's mother) was substituted as defendant, and a decree was made against her *ex-parte*. It was, however, set aside after her death on the application of *M* (defendant No. 2), the sister of *G*, on the ground of want of due service of process upon *G* and his widow. *M* was substituted as defendant in the suit, and a new decree was made in her favour. That decree [illegible]

purchased "all the right, title, and interest which the said defendant had in the said property." *J* was put into possession of the property. In 1877 the plaintiff (son of the original mortgagor *G*) filed the present suit against *J* and *M*, alleging that the mortgage-bond on which *J* had obtained his decree had been forged by *J*, and contending that the decree and subsequent proceedings under it did not affect his rights, inasmuch as he had not been made a party to them. The prayer in the plaint was that the decree and sale should be set aside and the property restored to his possession. The defence of *J* substantially was that [illegible]

suit and appeal, and that the mortgage-bond was genuine. On appeal, that decree was reversed by the District Judge, on the ground that the plaintiff had not been represented in the previous litigation [illegible]

redemption in the mortgaged property vested in him; and that the inheritance was wholly unrepresented in the previous litigation, inasmuch as *M* was not appointed guardian of the plaintiff's person or administratrix of his estate, either under Madras Regulation V of 1804, ss. 2, 19, 23, or under Act XX of 1864, [illegible]

136. ——— *Sale in execution of a decree against a deceased person represented by a minor son—How far such sale affects interest of an heir not party to decree or execution-proceedings.*—*K*, a Mahomedan woman, who was a co-sharer in a certain khoti vatan, died indebted, and was sued after her death as "represented by her

SALE IN EXECUTION OF DECREE
—continued.

11. DECREES AGAINST REPRESENTATIVES
—continued.

minor son represented by his guardian" A decree having been obtained against *K*. as so represented, her share in the khoti was put up for sale in execution, and was purchased by the plaintiff who obtained a [illegible]

minor son, had left her surviving a daughter who had not been made a party to the suit or to the execution-proceedings, and the defendants contended that her share in her mother's estate had not passed to the plaintiff *Held* that the plaintiff was entitled to the whole of *K*'s share. The debt due by *K* was [illegible] -ible, [illegible] the [illegible] in [illegible] *K*'s [illegible] by the daughter. KHURSHET BIBI *v.* KESO VINAYEK [I. L. R., 12 Bom, 101

137. ——— Representatives of de- [illegible] *to mortgage* [illegible] heirs of a [illegible] property of their ancestor. After the mortgage, a judgment- [illegible]

question with respect to the powers of the heirs and the rights acquired by the mortgagee and the purchaser under the execution, in a suit between the latter, was to be determined not by Mahomedan law, but by the principles of "justice equity and good conscience" *Semble*—That even if the Mahomedan law applied, the sale in execution would be subject to the mortgage. CAMPBELL *v.* DELANEY [Marsh, 509

138 ——— *Purchaser of share of estate, Rights of—Purchase from some of the heirs—Absent heir, Reappearance of*—*B R*, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8 annas share and after [illegible]

who had been for some years absent on a pilgrimage to Mecca. On her return she, in January 1874, sold her interest in the house to *M*. In a suit by *M* against *S* and *H* for possession of the share so purchased by him,—*Held* that *S* did not represent the whole estate of *B R*, and the share purchased by the plaintiff did not pass under the execution sale to *H*; the plaintiff, therefore, was entitled to recover HENDRY *v.* MUTTY LALL DHUR [I. L. R., 2 Calc., 395

139. ——— *Purchase of interest of some of the heirs—Heir not party to suit—Right acquired by purchaser*—*A*, a Mahomedan, died possessed of immoveable property and leaving a widow, a daughter, and a sister, *B*, his heiresses according to Mahomedan law *B* was entitled to a one-sixth share of an undivided moiety of a certain portion of the property which was situated in Calcutta After *A*'s death, the *L* Bank sued his daughter and her husband and two of her husband's brothers in a mofussil Court to realize certain mortgage securities executed by *A* to the Bank, and obtained a decree by consent Neither the widow nor *B*, who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of *A*, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of *A*, deceased, the ancestor and of the defendants (naming them), the representatives, in a moiety of a piece of land situate," etc *B* afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff who now sued the purchaser at the execution sale to recover the subject of his purchase *Held* by GARTH C J, KEMP and JACKSON JJ (MARKBY and AINSLIE JJ, dissenting) that the decree and the execution founded upon it did not affect the share of *B* in the estate of *A*, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff ASSAMATHEMNESSA BIBEE *v.* LUTCHMEEPUT SINGH . I. L. R, 4 Calc., 142

S C ASHRUF ALI *v.* LUTCHMIPUT SINGH [2 C. L. R., 223

140 ——— *Mahomedan law Decree against heir of deceased Mahomedan.*—Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs. A [illegible]

sued the purchaser to recover her 6 annas share without making the original mortgagee a party. *Held* that the mortgagee was not a necessary party to the suit, and that the share of the sister, notwithstanding that the right, title, and interest of the mortgagor had been sold, was not affected by the sale, and that the plaintiff as her assignee was

SALE IN EXECUTION OF DECREE —*continued.*

11. DECREES AGAINST REPRESENTATIVES —*concluded.*

entitled to recover. SITA NATH DASS *v.* LUCHMIPUT SINGH . . . . . 11 C. L. R., 268

141. ———— Mortgage by one of the heirs of deceased—*Direction in will for payment of debts—Decree against heirs for debt of ancestor—Charge on property.*—A testator by his will directed payment of all his debts, and subject thereto devised his property to his heirs. After one of the testator's creditors had obtained a decree against the heirs in their representative capacity, which by its terms was to be satisfied out of the assets left by the testator, one of the heirs mortgaged his share in twelve properties left by the testator. Subsequent to the mortgage, one of the mortgaged properties was sold in execution of the creditor's decree The mortgagee afterwards brought a suit against the mortgagor and obtained a decree on his mortgage. *Held* that, as neither the direction in the will for payment of debts nor the decree in the creditor's suit created a charge on the property of the testator, the property sold in execution of the creditor's decree had been sold subject to the mortgage, and the mortgagee was entitled to execute his decree against that property. *Bazayet Hossein* v. *Dooli Chund, I. L. R., 4 Calc., 402,* distinguished. RAM DHUN DHUR *v.* MOHESH CHUNDER CHOWDHRY . I. L. R., 9 Calc., 406 : 11 C. L. R., 565

142. ———— *Civil Procedure Code, s 234—Sale in execution of decree against deceased Mahomedan's estate—Representation of* ...

belonged to *V*, and made her husband and two of her children parties to the execution proceedings The land was sold and purchased by the decree holder *Held*, in a suit brought by the children of *V*, to set aside the sale on the ground (*inter alia*) that some of them were no parties to the proceedings in execution, and that the others, being minors at the time, had not been represented by a guardian appointed by the Court, that the sale was valid. KANHAMMAD *v.* KUTTI

[I. L. R., 12 Mad., 90

12. RE-SALES.

143 ———— Defaulting purchaser, Liability of—*Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308*—The provisions of s. 293, Act X of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss 297, 307 and 308. RAMDHANI SAHAI *v.* RAJRANI KOOER

[I. L. R., 7 Calc., 337 : 9 C. L. R 23

SALE IN EXECUTION OF DECREE —*continued.*

12. RE-SALES—*continued.*

144. ———— Time allowed for payment ... *ure Code,* ... *icting sale* ... *purchase-* ... the Civil Procedure Code give the officer conducting a sale of moveable property a discretion to allow the purchase-money to be paid at a reasonable time after the sale has been made FARREED ALUM *v.* SHEO CHARUN RAM . . . . . 4 N. W., 37

145. ———— *Civil Procedure* ... *riod under.*— ... for payment under s. 254, was excluded. AMANEE BEGUM *v.* KOORBAN ALI 3 Agra, 204

146. ———— Failure of purchaser to pay deposit—*Civil Procedure Code, 1859, s. 254.—Failure to deposit, Re-sale on*—According to s. 254, Civil Procedure Code, 1859, the property had to be put up again for sale on the purchaser ...

time of the first sale. JOOBRAJ SINGH *v.* GOUR BUKSH LALL . . 7 W. R., 110

147. ———— Defaulting purchaser— ... purchaser, the difference was leviable from him under s. 254, Code of Civil Procedure, but was levied without interest SOORJ BUKSH SINGH *v.* SREEKISHAN DOSS

[9 W. R., 500

See SOORUJ BUKSH SINGH *v.* SREEKISHEN DOSS [6 W. R., Mis., 126

148 ———— *Failure to pay deposit—Failure to pay balance of purchase-money—Civil Procedure Code, 1859, s. 253.*—The provisions ...

... to make the deposit required by s 253, that the purchaser could be compelled to pay up the difference between the first and second sales. AJOODHYA PERSAD *v.* GOPAL DUTT MISSER

[17 W. R., 271

149. ———— *Civil Procedure Code, 1877, ss. 293, 294 –Failure to pay deposit—Re-sale — Redress against defaulter — Bidding without permission of Court—Benami purchase* — A purchaser of property at a Court-sale who fails to pay the deposit (25 per cent on the purchase-money) directed to be paid by s. 306 of the Civil Procedure Code is a defaulting purchaser within the

SALE IN EXECUTION OF DECREE —*continued.*

12. RE-SALES—*continued.*

meaning of s. 253 of that Code, and liable, as such, to make good any deficiency of price which may happen on a re-sale and all expenses attending the same. JAYSHRBHAI *v.* HARIBHAI I. L. R., 5 Bom., 575

150 ——— *Civil Procedure Code, 1859, s. 254*.—A purchaser at an execution-sale having defaulted to pay in the purchase-money, the property was ordered to be re-sold. Before, however, the re-sale took place, another sale of the same property was effected at the instance of another judgment creditor, but at a lower price than on the first occasion. *Held* that there was no re-sale such as was contemplated in ss. 253 and 254, Act VIII of 1859, and that the first purchaser was not liable for the difference between his bid and the price obtained at the same sale. BISOKHA MOYEE CHOWDHRAIN *v.* SONATUN DOSS . . 16 W R, 14

151 ——— *Act VIII of* [illegible] pro- [illegible] put [illegible] down [illegible] the decree. The purchaser, however having made default in payment of the purchase-money, the property was [illegible]

DASI *v.* GOLAM ABARDARI [13 B L R., 114: 21 W. R., 149

152. ——— *Civil Procedure Code, 1859, s 254*.—*Held* by PHEAR, J (AINSLIE, J., *dissentiente*), that if for any good reason the auctioneer at an execution-sale under the Code of Civil Procedure does not accept as purchaser the person named by the highest bidder as his principal, he cannot make the bidder himself [illegible]

[illegible] he made the purchase for *D K*, he accepted D K as purchaser in H's bid, and that [illegible]

recourse should first have been had to *D K*, who should have been allowed to show cause against an order of payment. HUREE RAM *v.* HUR PERSHAD SINGH . . . . . 20 W. R., 80

Held (on appeal under the Letters Patent confirming the judgment of PHEAR, J.) that the party purchasing at an execution-sale under the Civil Procedure Code in the character of an agent cannot be made liable as a principal, and a proceeding upon the contract under s 254 in such a case must be taken against the principal HUREE RAM *v.* HUR PERSHAD SINGH . . 20 W. R., 307

153. ——— *Civil Procedure Code, 1859, s 254*.—Where property had been sold under a decree, and the purchaser at the execution sale had [illegible]

who might perhaps have his remedy against the defaulting purchaser. ANANDRAV BAPUJI *v.* SHEKH BABA . . . . . I. L. R., 2 Bom., 562

154. ——— *Civil Procedure Code, 1882, s. 293 Defaulting purchaser answering for loss by re-sale—Description of property at sale and re-sale. Difference of.*—The sale contemplated by s 293 of the Civil Procedure Code must be a sale of the same property that was first sold and under the same description, and any substantial difference of description at the sale and re-sale, in any of the matters required to be specified by s. 287, to enable intending purchasers to judge of the value of the property, will disentitle the decree-holder to recover the deficiency of price under s. 293. *Semble*—That even if the difference of description was due to the value of the property having been changed, between the sale and re-sale, owing to causes beyond the control of any person, the decree-holder, if entitled to claim damages against a defaulting purchaser at the first sale, must proceed against him by way of suit, and not by an application under s 293. BAIJNATH SAHAI *v.* MOHEEP NARAIN SINGH [I. L. R, 16 Calc, 535

155. ——— *Civil Procedure Code, 1882, ss. 293, 306—Liability of defaulting purchaser*.—At a sale in execution of a decree a decree-holder who had obtained leave to bid, was alleged to have made a bid through his agent of R90,000, but he shortly afterwards repudiated the bid and did not pay the deposit The property was put up for sale again on the following day under s. 306 of the Code of Civil Procedure, and was in due course knocked down for a smaller sum The [illegible]

156. ——— *Civil Procedure Code, s. 293—Order for recovery of deficiency on re sale—Right of suit to set aside order—Certificate of amount of deficiency.*—*Held* that a suit will lie to set aside an order passed under s. 293 of the Code of Civil Procedure. *Held* also that the fact that the certificate provided for by s 293 of the Code has not been granted will not prevent the decree-holder or the judgment-debtor, as the case may be, from recovering from the defaulter the deficiency

SALE IN EXECUTION OF DECREE —*continued.*

12. RE SALES—*continued.*

arising on a re sale of property sold in execution of a decree, but not paid for. TAPESRI LAL v. DEOKI NANDAN RAI . . . I. L. R., 19 All., 22

157. —————— *Civil Procedure Code (Act XIV of 1882), ss. 293, 306, 308, 309, 556 —Auction sale "Re-sold" "Put up to sale," Meaning of—Construction—Default in depositing purchase-money.* S. 293, Civil Procedure Code, extends to re-sales held under ss. 306 and 308, and there is no substantial difference between the words "re-sold" and "re-sale" which occur in ss. 308 and 309 and the words "put up again and sold" which occur in s. 306. *Ramdhani Sahai v. Raj Rani Koer, I. L. R., 7 Calc., 537*, relied upon. S. 309, Civil Procedure Code, does not apply to a case in which the property is put up again and sold forthwith under the provisions of s. 306, Civil Procedure Code. RAJENDRA NATH ROY v. RAM CHUNDER SINGH . . . . . 2 C. W. N., 411

158. —————— Re-sale by Collector—*Suit to set aside sale*—The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain jumma sold in execution of a Small Cause Court decree. Subsequently the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*Held* that, when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. SAMIRADDI KHALIFA v. HARIS CHANDRA

[3 B. L. R., A. C., 49 : 13 W. R., 451 note

WAHID ALI v. SADIQ ALI

[12 B. L. R., 487 note : 17 W. R., 417

MOJON MOLLO v. DULA GHAZI KULAY

[12 B. L. R., 492 note

PRAN BANDHU SIRKAR v. SARBASUNDARI DEBI

[3 B. L. R., A. C., 52 note : 10 W. R., 434

TIRTHANUND THAKOOR v. PARESMONY JHA

[10 B. L. R., 142 note : 13 W. R., 449

DOWLUT GAZI CHOWDHRY v. MUNWAR

[12 B. L. R., 485 note : 15 W. R., 341

159. —————— *Collector, Power of, to set aside sale and to order a re sale.*—A sale [illegible]

[illegible]

R650 The purchase-money was duly paid into Court. Subsequently a third party applied to the Collector to set aside this sale, and offered R800 for the property. The Collector made an order setting aside the sale and ordering a re sale; the biddings at such re-sale to commence at R800. The re-sale accordingly took place. The decree-holder applied to the Subordinate Judge to set aside the re-sale and to confirm the previous sale to her. On reference to the High Court,—*Held* that the re-sale by the Collector was a nullity, and that the question with regard to the confirmation of the previous sale should be dealt with by the Subordinate Judge as if the Collector had issued no orders on the subject. *Ganpatram Motiram v. Isakji Adamji, I. L. R., 15 Bom., 322*, followed. BAI AMTHI v. MADHAV MANOR . . . I. L. R., 15 Bom., 694

See NARAYAN v. RASULKHAN

[I. L. R., 23 Bom., 531

SALE IN EXECUTION OF DECREE —*continued.*

12. RE-SALES—*concluded.*

13. PURCHASERS, TITLE OF.

(*a*) GENERALLY.

160. —————— Title given by sale—*Implied warranty of title—Caveat emptor.*—In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution-creditor of the title of the judgment-debtor, the maxim "*caveat emptor*" applying. DHONDU MATHURADAS NAIK v. RAMJI VALAD HANMANTA KAKDA . . . 4 Bom., A. C., 114

KRISHNAPA VALAD SANTU v. PANCHAPA VALAD GURPADAPA . . . 6 Bom., A. C., 258

JUMMAL ALI v. TIRBHEE LALL DOSS

[12 W. R., 41

161 —————— *Principle of "caveat emptor"*—Where a party purchases an estate sold in execution after notice that parties other than the judgment debtor claim rights and interests in the property, the rule of *caveat emptor* applies. SHAHABOODEEN CHOWDHRY v. RAMGUTTY CHUCKERBUTTY . . . . 9 W. R., 558

162 —————— *Ground for setting aside sale—Writ of fieri facias.*—A sale by the Sheriff to a *bonâ fide* purchaser for valuable consideration will not be set aside on the ground that the judgment creditor had communicated with the Sheriff and desired him to stay the sale. The purchaser need not trace back his title beyond the *fi. fa.* KAMINEE DOSSEE v. GOURMONEY DOSSEE

[1 Ind. Jur., N. S., 359

163. —————— *Warranty—Caveat emptor.*—In a sale in the execution of a de- [illegible]

[illegible]

registers were proclaimed for sale in the execution of a decree and sold, described as recorded and the sons of the judgment-debtor subsequently sued the auction-purchaser to recover their interests in such share and obtained a decree for such interests, and

SALE IN EXECUTION OF DECREE—*continued.*

13. PURCHASERS, TITLE OF—*continued.*

the auction-purchaser thereupon sued the decree-holder for a refund of the purchase-money proportionate to such interests and for the costs of defending such suit,—*Held*, there being no fraud or misrepresentation on the part of the decree-holder, or any-

v. Mahtab Bibee . . I. L. R., 2 All. 828

164. ——— *Caveat emptor*

and conveyed it to his wife by deed of gift on the October. In execution of a decree obtained by *G*, the defendant, in 1269 (1862), against *H*, the property was attached. *K*'s wife objected under s. 246 of

applied, and the defendant was not responsible for

165 ——— *Suit to recover purchase-money — Warranty of title — Caveat emptor — Right of purchaser — Civil Procedure Code, 1859, ss. 256, 257.*—The right, title, and interest of *G* in certain immoveable property was attached and notified for sale in the execution of a money-decree held by *T*. It was also attached and notified for sale in the execution of a money decree

been held that, when the right, title, and interest of a judgment debtor in a particular property is sold, there is no warranty that he has any right, title, or

SALE IN EXECUTION OF DECREE—*continued*

13. PURCHASERS, TITLE OF—*continued.*

the suit was maintainable. The provisions of s. 257 of Act VIII of 1859 apply to applications made under s. 256 of that Act, and to those only. *Held* therefore that, inasmuch as *K* objected to the confirmation of the sale to him on the ground that the

Wards v. Gaya Prasad . I. L. R., 2 All., 106

166.——— *Sale in execution set aside—Second sale in execution of a different decree—First sale subsequently confirmed in suit for that purpose—Title of purchasers at first sale Civil Procedure Code (1882), ss. 311, 132.*—Certain immoveable property was sold in execution of a decree, but on objections being raised by the judgment-debtors under s. 311 of the Code of Civil Procedure, the sale was set aside. After the sale had

at the second sale were no parties, and had, moreover, been obtained by means of collusion between the

(b) Certificate of Sale.

167.——— **Position of purchaser with certificate**—*Certificate of purchase by Registrar—Conveyance—Suit for partition—Declaration of right to share—Rules of Court, 415, 431.*—The position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under rule 415 of the Rules of Court is that of a person clothed with a right to a conveyance in virtue of a contract; he

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*continued.*

does not hold, save as regards the parties to the contract of sale, the position of an owner When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance, the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property; and therefore as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a s... anc he pro. DEB . . . . I. L. R., 10 Calc., 253

168. ——— Title of purchaser without certificate—*Possession—Unregistered certificate of sale—Valid title—Codes of Civil Procedure, Acts VIII of 1859 and XIV of 1882*—A purchaser of immoveable property at a Court-sale under the Civil Procedure Code, Act VIII of 1859, who has been put into possession by the Court, has ...

170. ——— Evidence of title of purchaser—*Sale of immoveable property—Confirmation of sale.*—The order confirming a sale of im... PRASAD MYTEE *v.* NUND KISHORE GIRI [I. L. R., 9 Calc., 842: 12 C. L. R., 448

171. ——— Completion of title of purchaser—*Payment of purchase-money and confirmation of sale—Civil Procedure Code, s. 316.*—Under s 316 of the Civil Procedure Code (Act ...

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*continued.*

Lalbhai Lakhmidas v. Naval Mir Kamaludin ...

172 ——— *Sale in execu-* ... Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale certificate or should be put into possession by the Collector. *Held* therefore that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale certificate might be an invalid document and the Collector had not put him into possession. MUZAFFAR HUSAIN *v.* ALI HUSAIN [I. L. R., 5 All., 297

173. ——— *Purchaser at execution sale—Suit for possession of property—Proof of title—Act VIII of 1859, ss. 257, 259.*— ...

JAGAN NATH *v.* BALDEO . I. L. R., 5 All., 305

KALEE DASS NEOGEE *v.* HUR NATH ROY CHOWDHURY . . . . W. R., 1864, 279

174. ——— *Purchasers at successive execution sales—Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale—Priorities.*—On the 9th December 1876 the plaintiff purchased a house at an auction-... possession from the judgment-debtor in April 1880. The plaintiff now sued for possession. It was con-...

SALE IN EXECUTION OF DECREE *—continued.*

13. PURCHASERS, TITLE OF—*continued.*

sue for possession. YESHWANT BABURAV *v.* GOVIND SHANKAR . . . I. L. R., 10 Bom., 453

175. ———————— *Certificate of*

TRAYA KRISHNA DATAR I. L. R., 24 Bom., 120

176. ———Period from which title of purchaser dates—*Date of sale—Date of confirmation of sale.*—The title of a purchaser at a judicial

177. ———————— *Confirmation of sale—Liability of purchaser for Government revenue.*—The defendant became a purchaser at an execution-sale of a share of certain property, of which the plaintiff held another share partly as zamindar and partly as patnidar. The sale took place in September 1872, but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the confirmation a considerable sum became due for Government revenue on the whole property, and to prevent its being sold the plaintiff paid the whole of the revenue due. In a suit to recover the proportion due in respect of the share purchased by the defendant,—*Held* that, on confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale, and therefore she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation. BHYRUB CHUNDER BUNDOPADHYA *v.* SOUDAMINI DABEE [I. L. R., 2 Calc., 141

178.

for possession on the 2nd of April 1879. *Held* that the right to apply for possession contemplated in ss 263 and 264 of the Civil Procedure Code (Act VIII of 1859) corresponding with ss. 318 and 319 of the Civil Procedure Code (Act X of 1877) accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed; and that therefore the period of limitation against the purchaser counted from the former date. BASAPA *v.* MARYA . . . . I. L. R., 3 Bom., 433

179. ———Certificate of sale, Application for—*Civil Procedure Code (Act XIV of 1882), s. 316—Court Fees Act (VII of 1870), s. 6.*—An application by an auction-purchaser for a certificate of sale need bear no Court-fee stamp, since by s. 316 of the Civil Procedure Code (Act XIV of 1882) it is not even required to be in writing. HIRA AMBAIDAS *v.* TEKCHAND AMBAIDAS [I. L. R., 13 Bom., 670

180. ——— Unregistered certificate of sale—*Interest of purchaser—Second sale of same*

mortgagee against the said C. The defendant had obtained a certificate of sale and was put into possession, but had not then registered the certificate. He subsequently obtained another certificate, which was registered in June 1882 In a suit by the

the plaintiff by his subsequent purchase in execution of the money-decree against *C* took subject to that interest. The grant to the defendant of the second certificate, which was registered, sufficiently proved that the sale to him had been confirmed. CHINTAMANRAV NATU *v.* VITHABAI I. L. R., 11 Bom., 588

181. ———Proof of title without production of certificate of sale—*Civil Procedure Code, 1859, s 259—Registration Act, 1866, s. 49—Omnia presumuntur rite esse acta*—Assuming that s. 49 of the Registration Act, 1866, required that a

182. ——— Title of auction purchaser without certificate of sale—*Confirmation of sale.*

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*continued.*

Effect of.—The plaintiff as an agriculturist sued the defendant to redeem certain land mortgaged to him with possession by her deceased husband. The defen-

and obtained a review of the above order, but on

renewed his application to the Subordinate Judge, who reversed his previous order, and rejected the plaintiff's claim. The plaintiff appealed to the

r Court's order

the defendant

e order of the

sale certificate

establishing the defendant's title to the property as against the plaintiff. Where property has been sold in execution of a decree, a party to the suit in which the decree has been passed, or his representative, cannot, after the sale has been confirmed, dispute the title of the purchaser at the sale. The order confirming the sale completes the title of the latter as against the former. KHUSHAL PANACHAND *v.* BHIMABAI

[I. L. R., 12 Bom., 589

183. ———— Statement in certificate of sale—*Evidence—Suit to enforce charge against purchaser.*—A statement in a sale-certificate, granted by a Court, that the purchase is subject to a charge, is not conclusive evidence against the purchaser, when it is sought to enforce the charge by suit. RAMACHANDRA JOISHI *v.* HAZI KASSIM

[I. L. R., 16 Mad., 207

Priority—Civil Procedure Code (Act XIV of 1882), s 316—Limitation—Confirmation of sale.—On 27th February 1886 the plaintiff purchased certain land at a Court-sale held in execution of a decree On the 10th March 1886 the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886, and the sale to the plaintiff not until the 21st July 1886. Certificates of sale were issued to both plaintiff and defendant on the same day, *viz.*, on the 2nd September 1886, and on the 14th February 1887 the defendant was put in possession. In 1889 the plaintiff brought this suit to recover possession. The defendant relied on s. 316

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*continued.*

property sold" in s. 316 of the Code of Civil Procedure mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed as destroying any lesser interest which arises by reason of general equitable principles. *Quære*—Whether the provision in s. 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them. *Per* JARDINE, *J.*—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties. DAGDU *v.* PANCHAMSING

[I. L. R., 17 Bom., 375

185. ———— Title of auction-purchaser

[I. L. R., 19 All., 188

186. ———— Certificate of sale—*Civil Procedure Code (Act XIV of 1882), s. 316—Auction-purchaser—Confirmation of possession—Title*

actually granted, it makes the title absolute and makes that title relate back to the date of the sale, so as to warrant him when the sale is confirmed and a

stood on a property before the confirmation of its sale,—*Held* that the plaintiff, who is the auction-purchaser of the property, can bring a suit after the date of the confirmation of sale for damages against the defendant for cutting the trees *Dagdu v. Pancham Sing Gangaram, I. L. R., 17 Bom., 375,* and

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*concluded.*

Prangour Mozoomdar v. Hemanta Kumari Debya, I. L. R., 12 Calc, 597, referred to ADHUR CHUNDER BANERJEE *v.* AGHORE NATH AROO [2 C. W. N., 589

14. DISTRIBUTION OF SALE-PROCEEDS.

187. ——— Civil Procedure Code, 1882, s. 295 (1859, ss. 270, 271)—*Effect of, on rights by contracts—Object of procedure under those sections.*—The purport of ss. 270 and 271 of Act VIII of 1859 (with which s. 295 of Act X of 1877 corresponds) was not to alter or limit the rights of

[illegible]

buted. HASOON ARRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN . I. L. R., 4 Calc, 29

RAJCHUNDER SHAHA *v.* HURMOHUN ROY [22 W. R., 98

188. ——— (1859, s. 270)—*Property not sold in execution of decree*—S. 270 of the Civil Procedure Code did not apply to a case in which property has not been sold in execution of a decree. BISHEN CHUNDER SURMA CHOWDHRY *v.* MUN MOHINEE DABEE . . . 8 W. R., 501

BALAJI RAMCHANDRA *v.* GAJANAN BABAJI [11 Bom., 159

189. ——— *Civil Procedure Code (Act XIV of 1882), ss. 295, 310A—Bengal Tenancy Act (VII of 1885), s. 174—Sale in execution of decree—Deposit by judgment-debtor—Rateable distribution.*—S. 295, Civil Procedure Code, does not apply to deposit made by the judgment-debtor either under s. 174, Bengal Tenancy Act, or under s. 310A of Civil Procedure Code. BIHARI LALL PAUL *v.* GOPAL LAL SEAL. . . 1 C. W. N., 695

190. ——— *Imperfect*

[illegible]

Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor. The [illegible] until these [illegible] hat the sale [illegible] transaction, *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in the manner provided by s. 274 of the Civil Procedure

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

[illegible]

made; that the sale by the judgment debtor was valid; and that execution of the decrees could not take place. Also *per* MAHMOOD, J.—While s 295

[illegible]

191. ——— *Rights created by s 295, how affected by insolvency and vesting order—Insolvent Act (11 & 12 Vict., c. 21), s. 49.*—An order under s. 295 of the Civil Procedure Code affects only interests existing at the time The insolvency of the debtor introduces a new state of

[illegible]

v. Russick Lall Mitter, I. L. R., 15 Calc., 202, cited. HOWATSON *v.* DURRANT [I. L. R., 27 Calc., 351 4 C. W. N., 610

192. ——— *Rateable distribution—Assets realized "by sale or otherwise."*—The words of s. 295 of the Code of Civil Procedure, "assets realized by sale or otherwise in execu-

[illegible]

wise should be construed as meaning by sale or by other process of execution provided for by the Civil Procedure Code. SEW BUX BOGLA *v.* SHIB CHUNDER SEN . . I. L. R., 13 Calc., 225

193. ——— *"Assets."—Money paid into Court by sale or otherwise in exe-*

[illegible]

[I. L. R., 6 Bom., 16

194. ——— *"Whenever assets are realized," Meaning of—Deposit of 25 per cent. of purchase-money—Assets.*—The words "whenever assets are realized" in s 295 of the Code of Civil Procedure really mean "whenever assets are so realized as to be available for distribution among the decree-holders" The 25 per cent of the purchase money deposited at a sale in execution of a decree is not "assets" within the meaning of

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

s. 295, but a mere deposit, and therefore not immediately available for payment to the decree-holder. *Vishvanath Maheswar* v. *Virchand Panachand, I. L. R.*, 6 Bom., 16, distinguished. *Jogendro Nath Sircar* v. *Gobind Chunder Addi, I. L. R.*, 12 *Calc.*, 252, distinguished and commented upon. HAFEZ MAHOMED ALI KHAN v. DAMODAR PRAMANICK . . . I. L. R., 18 Calc., 242

195. ——— *Money paid by debtor under arrest in satisfaction of decree—Assets.*—Money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise, under s. 295 of the Civil Procedure Code (Act X of 1877). S. 295 of the Civil Procedure Code (Act X of 1877) must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized." PURSHOTAMDASS TRIBHOVANDASS v. MAHANANT SURAJBHARTHI HARIBHARTHI

[I. L. R., 6 Bom., 588

196. ——— *Execution of decree—Attachment of property—Payment into Court of money due under decree—Assets realized by sale or otherwise.*—*G* and *C* held decrees against *B*, and took out execution of them and the judgment-debtor's property was attached, but no sale took

a decree, so as to be rateably divisible between the decree holders under s. 295 of the Civil Procedure Code, inasmuch as it could not be said that there was a realization from the property of the judgment-debtor. GOPAL DAI v. CHUNNI LALL

[I. L. R., 8 All., 67

197. ——— *Distribution of proceeds of execution—Assets realized by sale or otherwise in execution—Moneys realized by Receiver appointed by decree-holder—Equitable execution.*—Rents of property under attachment which have been realized by a Receiver appointed at the instance of one decree-holder are "assets realized by sale or otherwise in execution of a decree" within the meaning of s. 295 of the Code of Civil Procedure. The appointment of a Receiver by the Court at the instance of a judgment-creditor is a "process of execution." FINK v. MAHARAJ BAHADOOR SING . . . I. L. R., 26 Calc., 772

[4 C. W. N., 27

198. ——— *Realization of proceeds of sale—Sale under agreement sanctioned by Court—Sale not of the right or interest of judgment-debtor in property.*—*P*, the plaintiff in a suit No. 369 of 1886, obtained a decree for R2,14,728, in execution of which certain immoveable property was attached, including the premises 22, Strand Road, which was subject to certain trusts created by a deed, dated the 2nd February 1858, executed by the father

trusts by setting apart a sufficient sum out of the purchase-money, and to have the balance divided between the judgment-debtors; and, by the decree in that suit, dated the 2nd September 1892, the trustees of the deed were authorized to sell the premises 22, Strand Road, and were directed out of the proceeds of sale to set aside R45,000 to provide for the trusts, next to pay the costs therein directed, and then to apply the balance for the purposes in the plaint mentioned. In pursuance of this authority, the trustees, on the 25th February 1893, entered into an agreement

ordered that the trustees be at liberty to carry out the agreement for sale with *J L*; that the sale-proceeds be paid to *W*, a member of the firm of the attorneys for *P*, who out of such proceeds was to pay R45,000

notice of these attachments. *Held*, on an application by *P* to have the money paid out to her in part satisfaction of her decree, that it could not be treated as

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued*

"assets realized by sale or otherwise in execution of a decree" within the meaning of s 295 of the Code of Civil Procedure The sale of the property under the order of the 14th September 1893 was not a sale in

interest of the judgment-debtors or of any property belonging to them To constitute a "realization

Mahanant Surajbharthi, I. L. R , 6 Bom., 588, and *Sewbux Bogla* v. *Shib Chunder Sen, I. L. R., 13 Calc , 225,* referred to and approved. PROSONNOMOYI DASSI *v.* SREENAUTH ROY

[I. L. R , 21 Calc., 809

199. ——————— *Right of rival*

200. ——————— *Court to adjudicate on conflicting claims.*—The Court having jurisdiction to adjudicate the conflicting claims of attaching creditors is the Court in which the attached money is deposited. WOOMA MOYEE BURMONYA *v* RAM BUKSH CHETLANGEE . . 16 W. R., 11

201. ——————— *Decree of Small*

decree made by such Judge in the capacity of Judge of such Small Cause Court. HIMALAYA BANK *v.* HURST . . . . I. L. R., 3 All., 710

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

202 ——————— *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets.*—Certain moveable property was at first attached in execution of a money-decree passed by a Subordinate Judge in his Small Cause

the application must be allowed. Although a Subordinate Judge invested under Act XIV of 1869, s 28, with Small Cause powers acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a subordinate Court. MALHARI *v.* NARSO KRISHNA

[I. L. R., 9 Bom., 174

203. ——————— *Rateable distribution of assets—Transfer of application for execution.*—Where property attached in execution of a decree of a Munsif's Court is, or becomes, subject

v *Najeralli Abhramji, I L. R., 4 Bom , 472,* approved. MUTTALAGIRI *v* MUTTAYYAR

[I. L. R., 6 Mad., 357

204. ——————— *Attachment by more than one judgment-creditor of property of judgment-debtor in Court—Priority—Civil Procedure Code (Act X of 1877), s 272*—In execution

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in s 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the [illegible]

205.——————*Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court.*—Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Judge's Court in the same district respectively. The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court. *Held* that the order for rateable distribution was right. KELU *v.* VIKRISHA

[I. L. R., 15 Mad., 345

206.——————*Rateable distribution of assets—Civil Procedure Code, 1877, s. 266—Attachment of salary.*—The salary of a karkun, who was employed in the Second Class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First Class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop [illegible]

of another Court. KRISHNASHANKAR *v.* CHANDRASHANKAR . . . I. L. R., 5 Bom., 198

207.——————*Attachment—Rateable distribution of assets—Proceeds of sale under decrees of Small Cause Court.*—Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge accordingly attached it by prohibitory [illegible] Court, under s. 295 of Act X of 1877. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. JETHA MADHAVJI *v.* NAJEBALLI ABHRAMJI . . I. L. R., 4 Bom., 472

208.——————*Rateable distribution of assets realized in execution.*—*R* obtained a decree against *A* and another in the High Court under its original civil jurisdiction. In execution of that decree, *A*'s property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. [illegible] Class Subordinate Judge of Bijapur for rateable [illegible]

209.——————*Property attached in execution of decrees of Small Cause Court and High Court—Execution-proceedings in Small Cause Court transferred to High Court—Rateable distribution of assets realized in execution.*—The plaintiffs obtained a decree in the High Court against the defendant, and in execution attached goods in the defendant's shop. These goods, however, were already under attachment in execution of certain decrees obtained in the Small Causes Court against the defendant. On the 4th September 1895, by an order of the High Court made on the application of the plaintiffs, the execution-proceedings in the Small Cause Court suits were transferred to the High Court, and

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

it was ordered that the attached property should be realized by the High Court. The records of the execution-proceedings in those suits were lodged in the Prothonotary's office. On the 26th September 1895 the decree-holder in one of the Small Cause Court suits obtained an order from the Judge in [illegible]

[illegible]

210.——————*Rateable distri-* [illegible]

211.——————*Rateable distribution of assets, Preliminaries to right to share in—Prior application for execution requiring amendment.*—The circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application to be superseded by a later application, made before the completion of the necessary amendment, by another co-decree-holder for execution. AHMED CHOWDHRY *v.* KHATOON 7 C. L. R., 537

212.——————*Rateable distribution of assets, Preliminaries to right to share in* [illegible]

surplus to be rateably divided among the other execution-creditors. One of these then brought a suit to establish a preferential claim. *Held* that *K K*, who, as soon as it was ascertained that the fund might be so made use of, first applied for the sale of it, was the person who came under the Code of Civil Procedure, s 270, and was entitled to payment in full; and that *B* and *S* had been overpaid, and were liable to repay the surplus to the other decree-holders. SRISH CHUNDER SIRCAR CHOWDHRY *v.* SHIB NARAIN PAL. SHIB NARAIN PAL *v.* KOONJO KAMINEE DABEE . . . . . 22 W. R., 466

213.——————*Order as to proceeds on application of third party.*—An order by a [illegible]

[illegible]

S. C. IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADOOR [2 B. L. R., A. C., 217

214.——————*Rival decree-holders—Claimants under same decree.*—S. 270, Act VIII of 1859, applied only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree. ABID ALI *v.* MUNNOO BYAS . . . . 2 Agra, 183

215.——————*Separate sales in execution of decrees*—Application was made for execution of a decree for money against *R* and also for execution of a decree for money against *R* and another person jointly and severally. Certain immoveable property belonging to *R* was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the amounts of both decrees. Such property was then [illegible]

216. ——————*Rateable distribution of sale-proceeds—Same judgment-debtor—Sale in execution of decree—Execution-proceed-* [illegible]

visions of s 295 of the Civil Procedure Code to share rateably in the sale-proceeds, the decree not being against the same judgment-debtor, and a Court having no power in execution-proceedings

SALE IN EXECUTION OF DECREE
—continued.

14. DISTRIBUTION OF SALE-PROCEEDS
—continued.

to ascertain the respective shares of joint judgment-debtors. In *Shumbhoo Nath Poddar* v. *Luckynath Dey, I. L. R., 9 Calc., 920*, it was not intended to lay down that a person who has obtained a decree for money against a single judgment-debtor is entitled to come in and share rateably with a person who has obtained a decree against the same judgment-debtor and other persons. DEBOKI NUNDUN SEN v. HART . . I. L. R., 12 Calc., 294

217. ———————— *Decree-holders sharing rateably in sale-proceeds must be bonâ fide decree-holders.*—The words "decree-holders" or "persons holding decrees for money against the same judgment debtor" in s 295 of the Code of

from the distribution of assets. IN RE SUNDER DASS [I. L. R., 11 Calc., 42

218. ———————— *Rateable distribution—Creditor with joint decree.*—Where property belonging to *A* has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against *A* and *B*, such latter creditor is entitled, under s 295 of the Civil Procedure Code, to share in the proceeds of the sale of *A*'s property SHUMBHOO NATH PODDAR v. LUCKYNATH DEY . . . I. L. R., 9 Calc., 920

219. ———————— *Decree, execution of, by several judgment-creditors against one and the same judgment-debtor—Rateable distribution.*—The plaintiff obtained a decree against two persons *P* and *S* for a sum of money, and one of the defendants obtained another decree against *P* and *R*, the latter

Shumbhoo Nath Poddar v. *Lucky Nath Dey, I. L. R., 9 Calc., 920; Nimbaji Tulsiram* v. *Vadra Venkata, I. L. R., 16 Bom., 683*, referred to That it is only the unsatisfied portion of the decree that ought to be taken into account in a question of rateable distribution, there being no reason why any amount should be set apart in favour of a decree-holder in proportion to any sum covered by his decree which has already been realized. SARAT CHANDRA KUNDU v. DOYAL CHAND SEAL . . 3 C. W. N., 368

220 ———————— *Rateable distribution of sale-proceeds—Same judgment-debtors—Separate and joint judgment-debtors—Marshalling of assets between decree holders—Decree of Small Cause Court, Transfer of.*—The plaintiffs in this suit obtained a decree against all three defendants *A*, *B*, and *C*. In execution of such decree, they attached two sets of securities: (i) municipal bonds, the joint property of *B* and *C*, and (ii) Government loan notes, the property of *C* alone. These were sold by the Sheriff, but, before they were so sold, the holders of decrees in two other High Court suits came in and applied to the High Court for execution of their decrees, which decrees were against *C* alone. These last-mentioned decree-holders now claimed to participate rateably with the plaintiffs in this suit in the realized proceeds of both the above-mentioned securities. The plaintiffs in this suit contended that such decree-holders, having decrees only against *C*, were not claiming against "the same judgment-

holders had but one of these two, the equitable principle of marshalling should be applied, and the plaintiffs required to satisfy themselves as far as possible out of the fund not available to the other decree holder, before they had recourse to the other

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

221. ——— and s. 285—*Attachment by Small Cause Court—Transfer of decree to superior Court.*—Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution-proceedings to the superior Court, adopted and held supported by the cases of *Gopee Nath Acharje* v. *Achcha Bibee, I. L. R., 7 Calc., 553; Bykant Nath Shaha* v. *Rajendro Narain Rai,*

Venkati, I. L. R., 16 Bom., 683, not followed. CLARK v. ALEXANDER . I. L. R., 21 Calc., 200

HAR BHAGAT DAS MARWARI v. ANANDARAM MARWARI . . . . 2 C. W. N., 126

222. ———*Sale-proceeds—*

under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree. SHRINIVAS v. RADHABAI . I. L. R., 6 Bom., 570

223. ——— *Rateable distribution—Decree-holder for unascertained mesne profits who has applied for execution, Right of—Civil Procedure Code, 1882, s. 294.*—The holder of a decree for unascertained mesne profits who has

and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy. VIRARAGAVA AYYANGAR v. VARADA AYYANGAR . . . . I. L. R., 5 Mad., 123

224. ——— — *Sale in execution for creditor who has not attached.*—Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judg-

POOREE v. SHIB PERSHAD MADI [I. L. R., 7 Calc., 34

S. C. MEGH LAL POOREE v. MOHAMMED DUTT JHA . . . . 8 C. L. R., 369

225. ———*Rateable distribution—Civil Procedure Code, 1882, s. 266.*—One C

realized by the sale of M's property in execution of C's decree. *Held* that D was not entitled to such rateable proportion of the assets. MANIKLALL v. LAKHA MANSING . . I. L. R., 4 Bom., 429

226. ——— *Pauper suit—Civil Procedure Code, 1859, s. 309—Prerogative of the Crown.*—With a view to recover the amount of Court-fees which J would have had to pay had he not

the proceeds of such sale the amount of Court-fees J would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya* v. *Collector of Kanara, I. L. R., 1 Bom., 7,* applied in this case. COLLECTOR OF MORADABAD v. MUHAMMAD DAIM KHAN . . . . I. L. R., 2 All., 196

227. ——— (1859, s. 271)—*Property sold subject to mortgage.*—The proviso of s. 271 of Act VIII of 1859 was intended to apply

SALE IN EXECUTION OF DECREE —*continued.*

14 DISTRIBUTION OF SALE-PROCEEDS —*continued.*

to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of

FUTEH ALI *alias* NANNA MEAH *v.* GREGORY [6 W. R., Mis., 13

JOY CHUNDER GHOSE *v.* RAM NARAIN PODDAR [21 W. R., 43

See PURMESSUREE DOSSEE *v.* NOBIN CHUNDER TARUN . . . . . 24 W. R., 305

228. ———————— *Right of mortgagee who has obtained money-decree to share in surplus proceeds.*—Where a mortgagee suing upon his bond obtains a money-decree without any declaration of lien, he is in the same position as if he had not taken any mortgage at all, and in taking out execution his claim to a rateable distribution of surplus sale-proceeds of attached property is founded upon s 271 of the Civil Procedure Code, 1859. RADHA KANT ROY *v.* SADAPUT MAHOMED KHAN [21 W. R., 86

229. ———————— *Right of mortgagee to take residue of sale-proceeds and retain his*

right as mortgagee. BOLAKEE LAL *v.* CHOWDHRY BUNGSEE SINGH . . . 7 W. R., 309

230. ———————— *Execution of decree—Attachment by mortgagee—Surplus proceeds.*—Pending a suit against *A* and *N* upon a bill

between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange

got an order under his decree upon the bill of exchange for payment to him of the surplus sale-proceeds lodged in Court to the credit of *S*'s suit, and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. MACPHERSON, *J.*, having, on an application by *A*, set aside this order and directed that the plaintiff should refund into Court the money paid out to him, and that the sale should be stayed, the Court on appeal refused to set aside the order of the 26th May but

[14 B. L. R., 509

taneous sales in execution,—*Held* that, as all the properties were sold at the instance of all the mort-

232. ———————— *Provisoes—Lis pendens—Sale subject to mortgage.*—Where two mortgagees, in execution of their several decrees, attached the same property, of which a moiety without further specification was respectively mort-

233. ———————— *Mortgage—Allowance of set-off of purchase-money against amount of decree—Suit for share of sale-proceeds—Principle of distribution*—In execution of a decree against *M*, the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an 8 annas share of mouzah A was

SALE IN EXECUTION OF DECREE
—continued.

14. DISTRIBUTION OF SALE-PROCEEDS
—continued.

hypothecated as collateral security; and in execution of these decrees the defendants brought to sale, and themselves purchased, not an 8 annas share only, but the whole of mouzah A, and were allowed by the Court to set off the purchase-money against the amounts due to them under their decrees At the same time, the plaintiff's execution case was struck off on 30th June 1880. In a suit brought by the plaintiff under s 295 of the *Civil* Procedure Code for his share of the sale proceeds of

234. ——————— *Decree for money – Causes of action—Mortgage-decree—Mortgagee purchasing under his own decree, Execution*

from another to whom such sale-proceeds have been ordered to be paid, if brought before they have been actually paid to such other person, is premature and should be dismissed. Every decree, by virtue of

mortgaged property and from the mortgagor per-

SALE IN EXECUTION OF DECREE
—continued.

14 DISTRIBUTION OF SALE-PROCEEDS
—continued.

sonally is entitled to claim rateable distribution under that section, and is not in the first instance bound to

KHERJI . . . . I. L. R., 11 Calc., 410

235. ——————— *Mortgage—First and second mortgagees—Sale of mortgaged property in execution of decree of second mortgagee—Suit by first mortgagee for re-sale of property in execution of his decree* —On the 22nd

perty was put up for sale in execution of the second mortgagee's decree. The first mortgagee subse-

provisos to that section refer only to sales in execution of simple money-decrees, whereas the property in question had been sold in execution of a decree ordering its sale, and the provisions of the third proviso relate to subsequent and not prior incumbrances. JAGAT NARAIN RAI *v.* DHUNDHEY RAI

[I. L. R., 5 All., 566

See GUR SAHAI *v.* RAM DIAL . 7 N. W., 91

236. ——————— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale.*—Certain

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balance paid to the mortgagors. By an agreement subsequently made it was arranged that the mortgagors should remain in possession and pay rent to *A*. *A* obtained a decree for R2 00 and arrears of rent and costs, and for the sale of the land in satisfaction of the amount decreed The land was sold for R2,855 in March 1881. In May 1881 *B*, a puisne

SALE IN EXECUTION OF DECREE
—*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS
—*continued.*

mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A* was entitled only to R2,000 and R280 costs, but not

On the 23rd May 1884 *B* sued to recover R510 paid to *A* on account of rent on the 27th May 1881. The

237. ———————— The meaning of s. 295 of the Civil Procedure Code is that, when

238. ———————— *Execution of decree—Payment out of proceeds before confirmation of sale—Interest on purchase-money from date of sale to date of confirmation—Civil Procedure Code, 1882, ss 281, 315*—Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-

SIRCAR *v.* GOBIND CHUNDER ADDI
[I. L. R., 12 Calc., 252

239. ———————— *Execution-proceedings — Rateable distribution — Application for further execution—Notice—Civil Procedure*

B filed a petition for further attachment under

SALE IN EXECUTION OF DECREE
—*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS
—*continued.*

could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. The proper remedy was by a suit. VENKATARAMAN *v.* MAHALINGAYYAN
[I. L. R., 9 Mad., 508

240. ———————— and s. 276—*Claim to rateable distribution under s. 295—Sale pending attachment*—A claim under s. 295 of the

RAI CHOWDHRY *v.* MONMOHINI DASI
[I. L. R., 15 Calc., 771

241. ———————— and s. 294—

should either elect to have the property re-sold or pay into Court the rateable proportion due to *M. C* ob-

242. ———————— and ss. 235, 490—*Application for execution, Necessity of, in order to share in distribution under s. 295—Attachment before judgment, Effect of—Decree-holder*

JORDAN . . . I. L. R., 12 Bom., 400

243. ———————— "*Decree for money*"—"*Same judgment-debtor*"—*Decree for enforcement of lien and against judgment debtor personally—Decree-holder entitled to proceed against property or person as he may think fit*—*U* held a money-decree against *B*, *P*, and *R*, in execution whereof he caused to be attached and sold certain

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE PROCEEDS —*continued.*

property belonging to *B*. *D* held a decree against *B*, *P*, *R*, and *S*, which, so far as *P*, *B*, and *S* were con- [illegible]

[illegible]

for money under s. 295 of the Code, because it directed a sale of the property of the other judgment-debtors, and that the fact that there were four judgment-debtors in *D*'s decree and only three in *U*'s would not [illegible]

[illegible]

COVENANTED SERVICE BANK, BAREILLY [I. L. R., 10 All., 35

244. ——— *Rateable distribution—Decree for money—Mortgage-decree.*—The plaintiff and defendant, respectively, held successive mortgages on the same land The defendant obtained a decree on his mortgage against the land and in respect of any unrealized balance [illegible]

[illegible]

the amount of the debt, and he now sued to recover the sum which would have been payable to him under s. 295. *Held* that the plaintiff's [illegible]

[illegible] have been sold and the money paid to the defendant until the mortgaged property had been sold and had been found insufficient to pay his debt. KOMMACHI KATHER *v.* PARKER [I. L. R., 20 Mad., 107

245. ——— *Rateable distribution—Assets realized in execution.*—*A*, *B*, and *C* held money-decrees against the same judgment-debtor. *A* attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of *D*. In January *B* attached in execution the same funds. In February they were paid into Court, and subsequently on the same day *C* attached them as money due in the custody of the Court. *Held* that the funds should be rateably distributed between *A* and *B*, and that *C* was not entitled to participate therein. SRINIVASA AYYANGAR *v.* SEETHARAMAYYAR [I. L. R., 19 Mad., 72

246. ——— *Decree-holder, Purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds.*—A mortgagee who has obtained a mortgage decree, and after obtaining permission to bid at the sale held in execution of such decree has become the pur- [illegible]

[illegible]

decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court. SHEONATH DOSS *v.* JANKI PROSAD SINGH [I. L. R., 16 Calc., 132

247. ——— *Execution—Decree—Rateable distribution of proceeds of decree* [illegible] *i fides of the* [illegible] *h proceeds*— [illegible] of execution [illegible] de (Act XIV [illegible]

[illegible]

[I. L. R., 13 Bom., 154

248. ——— *Purchaser of decree against estate of a deceased* [illegible]

[illegible] viz., in [illegible] No. 5 of 1870, [illegible]

SALE IN EXECUTION OF DECREE
—*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS
—*continued.*

been obtained against the firm of *H B & Co*, and had been, prior to the 9th November 1886, purchased by the appellant *M*, who had also, prior to the 9th November 1886 applied for execution On the 6th April

contended that by the [illegible] *H K* the decree in suit No 657 of 1869 had been [illegible] *H D*, and that [illegible] nd fact, to a [illegible] *D*, of the pro- [illegible] the proceeds [illegible] ppealed from, [illegible] ortion of the [illegible] ble under the

stranger had purchased The fact that she borrowed the money and gave the share as a security to the lender did not affect the question. If the money did not come from *H D*'s estate, it could not matter whether it came directly from *P*'s pocket or from another person at her request. If the money was derived from a source having no connexion, directly or

JAIKISONDAS *v.* VIZBAL . I. L. R., 15 Bom., [illegible]

249. ——— *Effect of vesting order in insolvency.*—A debtor against whom several decrees had been passed filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders had

proceeds of sale to be held in execution [illegible]

v. PARASURAMA . . I. L. R., 15 Mad., [illegible]

250. ——— and s. 276—*Attachment before judgment of fund in hands of third*

SALE IN EXECUTION OF DECREE
—*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS
—*continued.*

the assignment—Fund by consent paid over to Sheriff by third party—Relative claims of assignee of fund and subsequently attaching creditors—Assets realized by sale or otherwise in execution—

August 1890 applied for execution. On the 24th

obtained by the Bank against *G* in suit 190 of 1890, and subsequently other creditors of *G*, who had obtained judgment against him, applied for execution and obtained attachments on the sum in question. On the 26th May 1891, under a consent

way Company. It was argued that the attachment was actually made only on R6,000, and that it did not therefore include the whole fund, which was of larger amount. *Held* that the misdescription in the order of attachment was a mere *falsa demonstratio*, and that the entire sum in the hands of the

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Railway Company was attached. The description of the property must be reasonably accurate, under the

251. ———— *Same judgment debtor—Sale of lands under attachment—Disposal of amount realized—Rateable distribution.*—A

that plaintiff should have the same rights against the proceeds of sale as he, as such receiver, had against the property to be sold Some of the villages were sold accordingly and the amount realized paid into the District Court. The defendant, who had obtained a separate decree against the son alone (the father having meanwhile died) in the same District Court,

recovery of the amount so obtained by defendant from the District Court,—*Held* (1) that the judgment-debtor against whom plaintiff and defendant held

252. ———— *Proceeds of*

No. 3), who had obtained a money-decree against the mortgagor (defendant No. 1). A balance of R103 8-11

was paid into Court, and subsequently returned to defendant No. 1 (the mortgagor). The plaintiff now su
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action only against the mortgagor (defendant No 1) not merely for the balance of R103-8-11, but for the whole of his claim. On appeal to the High Court,—*Held* that the claim of the plaintiff in virtue of his mortgage, although unregistered, was prior to that of *S* under his money-decree. The plaintiff's earlier

15. WRONGFUL SALES

253. — Wrongful attachment in

254. ———— Wrongful attachment—*Liability of decree-holder and purchaser to refund, to owner loss caused by sale of property wrongly*

See SUBJAN BIBEE *v.* SARIUTULLA [3 B. L. R., A. C., 413 : 12 W. R., 329

RAYNOR *v.* SUNGHEER SINGH . 5 N. W., 211

255. ———— Goods wrongly sold in

reference to anything which has taken place in the execution-proceedings. SHIBOO NARAIN SINGH *v.* MUDDEN ALLY. NATABAR NANDI *v.* KALI DASS PALI . I. L. R., 7 Calc., 608 : 9 C. L. R., 8

SALE IN EXECUTION OF DECREE —*continued.*

15. WRONGFUL SALES—*continued.*

256. ——— **Property of co-sharers wrongly seized and sold**—*Suit to recover shares.*—Where, under colour of buying *A*'s rights and interests sold in execution, the purchaser usurps the shares of *A*'s partners, they need not sue to reverse the sale, but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution. ATHUROONISSA *v.* RUGHOONATH BANERJEE

[W. R., 1864, 322

GUNGA NARAIN BEHUTTA *v.* COLLECTOR OF MIDNAPORE . . . . 6 W. R., 47

257. ——— *Co-sharer, Suit by—Suit for damages for sale against decree-holder.*—The defendant, in execution of a decree against *A*, seized certain moveable property, which was claimed under s. 246, Act VIII of 1859, by *B*. *B* was, on investigation, found to be part owner of the property. *B*'s claim was rejected and the sale took place, the property being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared that the sale extended only to the right, title, and interest of the debtor *A*, but made no mention of *B*'s claim. In a suit by *B* for damages against the defendant occasioned by the loss of the property of which he was a joint owner,—*Held* the defendant was not liable. TAMIZUDDIN MULLA *v.* NYANUTOLLA SIRKAR

[5 B. L. R., Ap., 73 note: 11 W. R., 528

258. ——— **Sale of property of person not party to execution proceedings**—*Joint decree executed against separate property—Decree against karnavan on tarwad debt before partition—Execution against one of the sharers after partition.*

14 *Mad.*, 29, referred to. KUNHAPPA NAMBIAR *v.* SHRIDEBI KETTILAMMA I. L. R., 18 Mad., 451

259 ——— **Decree against karnavan of tarwad on tarwad debt before partition** — *Execution against one of the sharers after partition—Joint decree executed against separate property.*—In a suit for declaration that

SALE IN EXECUTION OF DECREE —*continued.*

15. WRONGFUL SALES—*concluded.*

state of things when the debt was contracted must

16. INVALID SALES

(*a*) DEATH OF DECREE-HOLDER BEFORE SALE.

260. ——— **Effect of decree-holder's**

decree-holder was dead when such sale took place,

execution of the decree abated on the death of the

have proceeded under those sections. *Per* OLDFIELD,

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

the sale took place without his legal representatives being made parties to the execution-proceedings. *Per*

to a case where the judgment-debtor dies while execution is proceeding and after sale of his property

[I. L. R., 6 All., 255

Code, ss. 234.

applies only

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

debtor parties to the sale-proceedings,—*Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that the sale was regular and valid notwithstanding such omission.

[I. L. R., 12 All., 440

283. —— Sale without legal repre-

ously mortgaged to *K*. On the 11th June 1877 a warrant for sale was issued followed by the usual proclamation *S* died on the 27th September 1877, and a

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sale, and in 1883 sold it to *A*, who redeemed the mortgage from *K* and took possession. In 1889 *D*,

judgment-debtor and without his legal representative having been placed on the record. *Held* that the plaintiff was not entitled to redeem. *Per* JARDINE, *J.*—As no "substantial injury" was alleged to have resulted by reason of the plaintiff not having been brought on the record of the execution-proceedings immediately on the death of the judgment-debtor and before the sale took place, the purchaser acquired a valid title under s. 316 of the Code of Civil Procedure. *Per* RANADE, *J.*—The omission to join

step to set aside the sale, although she came to know of the sale within a few days after it took place; that there was no fraud or *mala fides* on the part of the judgment-creditor; that the sale had not resulted in any substantial injury to the plaintiff; and that the auction-purchaser and his assignee had been in

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

adverse possession for more than twelve years ABA BIN KHESAJI v. DHONDU BAI

[I. L. R., 19 Bom., 276

264. ——— **Omission to bring in representatives of deceased judgment-debtor**—*Civil Procedure Code (1882), s 311—Irregularity—Absence of a guardian "ad litem" for minor—Adult judgment-debtor described as minor.*—In a mortgage-decree *M* was one of the judgment-debtors, and the guardian *ad litem* of two of the other

decretal amount the sale was stayed *M* then died, and, although her heirs were some of the other judgment debtors, no one was brought on the record as her representative, and no one appointed guardian *ad litem* either for *J* or *K*. Upon a fresh application for sale in which the parties were described as in the decree, the sale was held An application under s. 311 of the Civil Procedure Code (1882) was then made on behalf of *J* and *K* to set aside the sale. *Held* that the omission to bring in the representatives of the deceased judgment-debtor did not vitiate the sale. *Sheo Prasad* v. *Hira Lal, I. L. R, 12 All., 440, Aba* v. *Dhondu Bai, I. L. R., 19 Bom., 276,* referred to *Krishnayya* v *Unnessa Begum, I. L. R., 15 Mad, 399,* not followed. *Romeshurry Dass* v. *Durga Dass Chatterjee, 7 C. L. R, 85,* distinguished. *Held* also that neither the absence of a guardian *ad litem* for *J* nor the description of *K* as a minor affected the validity of the proceedings. *Taqui Jan* v *Obaidulla, I. L. R., 21 Calc., 866,* referred to. NET LALL SAHOO v. KAREEM BUX

[I. L. R., 23 Calc., 686

265. ——— **Death of judgment-debtor after proclamation and before sale**—*Non-joinder of legal representatives—Application to set aside sale—Civil Procedure Code (1882), ss. 234, 311.*—An order for the sale of a debt of R70 000 (previously attached) owing by *H* and *W* to the judgment-debtor was made in execution in two decrees, and on 4th May 1895 a sale proclamation for 20th idem was issued On the 11th May the judgment debtor died leaving a will, of which *W* was one of the executors. *W* brought these circumstances to the notice of the Court stating that the executors would proceed to apply for probate and asking for an adjournment of the sale. The adjournment was refused and the sale proceeded, and the decree holders, who had previously agreed with *H*

administration of the estate of the judgment-debtor was afterwards transferred, applied to be brought on to the record and to have the sale set aside. *Held* that the sale was vitiated by the omission to bring the legal representative of the judgment-debtor on to

the record, and should be set aside on the application of the Administrator-General no separate suit being necessary for the purpose. *Sheo Prasad* v. *Hira Lal, I. L. R., 12 All., 440* dissented from GROVES v. ADMINISTRATOR-GENERAL OF MADRAS

[I. L. R, 22 Mad., 119

given to wrong persons—Title of purchaser—Right of redemption—Limitation—Civil Procedure Code (1877), ss. 234, 248, and 311.—On the 28th March 1

defendant.

a money-dec

executed, *N*

daughters, tl

1878 *H* appl

by his heir and nephew *R* *R* appeared and stated that he was not the heir, but that the heirs of *N* were his daughters, the plaintiffs The plaintiffs, however, were not made parties to the execution-proceedings nor were notices served on them under

J., who differed in opinions, FARRAN, *C.J.*, holding

therefore lost their right to redeem, and PARSONS, *J.*, being of opinion that the sale was null and void, and therefore that the plaintiffs were entitled to succeed.

of the plaintiffs who were not parties, the sale-

SALE IN EXECUTION OF DECREE —*continued.*

16 INVALID SALES—*continued.*

admittedly brought within that period, it was maintainable. ERAVA v. SIDRAMAPPA PASARE [I. L. R., 21 Bom., 424

Held by the Privy Council on appeal (reversing the decision of the High Court).—An execution sale cannot be treated as a nullity if the Court which sells has jurisdiction to do so; and it cannot be set aside as irregular without an issue raised for that purpose, and investigation made with the judgment creditor as a party thereto, nor under s. ... of the Code of Civil Procedure and art. 12 (a) of the Limitation Act, 1877, after one year from the date thereof. An executive Court does not lose jurisdiction to sell because it serves notice on a person who does not represent the deceased judgment debtor, and after-

(c) FRAUD.

267. ———— Application of ss. 256, 257, Civil Procedure Code, 1859 (1882, ss. 311, 312)—*Application to set aside sale.*—Ss. 256 and 257, Act VIII of 1859, did not apply to a suit in which fraud is imputed vitiating the sale *in toto.* UMBIKA CHURN CHUCKERBUTTY v. DWARKA NATH GHOSE . . 8 W. R., 506

VIRSINGAPPA BIN BASLINGAPPA v. SADASHIVAPPA APPA GOLKHANDI 7 Bom., A. C., 74

268. ———— Application to set aside sale—*Irregularity—Failure to prove fraud—Civil Procedure Code, 1859, s. 256.*—Where the facts connected with an execution-sale fell far short

sale. GOBIND SINGH v. MUNNO RAM DOSS [19 W. R., 414

Contra, GOBIND SINGH v. MUNNO RAM DOSS [19 W. R., 414

270. ———— Suit to set aside sale—*Sufficiency of proof—Irregularity, Proof of want of.*—In a suit to set aside an execution sale on the ground of fraud it is ...

[14 W. R., 325

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued*

271. ———— *Civil Procedure Code (1882), s. 311—Ground for setting aside sale or otherwise—Effect of fraud to which auction-purchaser is no party.*—A judgment-debtor cannot have a Court-sale set aside on the ground of fraud in the absence of proof that the auction purchaser was a party to the fraud, and that the fraud came to the judgment-debtor's knowledge subsequent to the confirmation of the sale. ABDUBAKER SAHEB v. MOHIDIN SAHEB I. L. R., 20 Mad., 10

272 ———— *Rights of bona fide auction-purchasers.*—When no fraud has been alleged, a sale in execution cannot be set aside as regards the auction-purchaser whether the order of Court under which it took place was legal or not. Even if the decree in execution of which the sale took place were a collusive one the rights of the auction-purchaser would not be affected if he was no party to the fraud and there would be no ground for setting aside the sale. MAHOMED KUZULBASH KHAN v. MAHOMED SHAH . . 12 W. R., 48

273. ———— *Suit for money secured by the mortgage of immoveable property situate partly in the family domains of the Maharajah of Benares—Fraudulent representation by*

... by the High Court in concurrence with the Board of Revenue. He accordingly proceeded with the suit, and on the 18th November 1874 gave the plaintiffs a decree for the recovery of the money

29th August and 4th September 1877 had been set aside. Such interest was accordingly put up for sale on the 20th May 1878 at Benares by the Subordinate Judge of Benares, and was purchased by the plaintiffs in the present suit, who were induced to purchase by such false representation. The plaintiffs in the present suit claimed the avoidance of the sale of the 20th May 1878 and the refund of the

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

nature of immoveable property situate within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court. *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878. Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immoveable property situate within the family domains of the Maharajah of Benares RAGHU NATH DOSS *v.* KAKKAN MAL

[I. L. R., 3 All., 568

274.

275. ———— *Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.*—In June 1875 *A*, being in pecuniary

defendant by means of false representation became

ary difficulties and included all *A*'s property. It was therefore void as against his then existing creditors, of whom *B* was one. *B* was therefore entitled to sell the property in execution of his decree. *Held* also that the plaintiffs were not entitled to set aside the sale on the ground of fraud, and that the only remedy, if any, open to them was a suit for

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

damages. The gift by *A* in 1875 was made to his wife as well as to the plaintiffs (his sons), and it gave them the property as tenants-in-common. The plaintiffs

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aside

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rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground.

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HORMUSJI.

(*d*) EXECUTION-PROCEEDINGS STRUCK OFF.

276. ———— **Effect on validity of sale**—*Beng. Reg. XX of 1795—Title of purchaser.*—

practicable despatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the regulation, but no sale was then effected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and

orders. *Held* that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that

were to be considered as taken in a new suit. Nor

SINGH *v.* KISHNANUND MISSER

[Marsh., 592: 2 Ind. Jur., O. S., 1
9 Moore's I. A., 324
5 W. R., P. C., 7

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

(e) DECREES AFTERWARDS REVERSED.

277. ———————— *Title of pur-*

validity of the sale or the title of the purchaser. CHUNDER KANT SURMAH *v.* BISSESUR SURMAH CHUCKERBUTTY . . . . 7 W. R., 312

FYAZOODDEEN BHOOYA *v.* SHUMSUNNISSA BEEBEE . . . . . . 12 W. R., 508

BEHAREE LALL *v.* RAJAH RAM [6 N. W., 291

278. ———————— *Reversal of portion of decree relating to costs—Sale in execution for costs.*—A sale in execution of a decree for costs is not cancelled when that part of the decree which made the plaintiff answerable for the costs is set aside. PEAREE MONEE DOSSEE *v.* COLLECTOR OF BEERBHOOM . . . . 8 W. R., 300

279. ———————— *Sale made after*

DOOBEY . . . . . 3 Agra, 398

280. ———————— *Sale pending*

reversed.—*Held* that *M* was entitled to the restoration of his property, and not merely to the proceeds of the sale. SADASIVAYYAR *v.* MUTTU SABAPATHI CHETTI . . . I. L. R., 5 Mad., 106

See LATI KOOER *v.* SOBADRA KOOER [I. L. R., 3 Calc., 720: 2 C. L. R., 75

NAGINDAS DEVCHAND *v.* NATHA PITAMBAR [10 Bom., 297

281. ———————— *Reversal of decree on appeal before confirmation of sale—Purchaser, Right of.*—Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale, under a decree which was reversed on appeal subsequently to the sale before it had been confirmed. *Held* that the Court which had made the decree ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court in completing the sale was none the less without jurisdiction, and, being without jurisdiction, could confer no title. If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected

sale is completed. Before he applies to the Court to confirm the sale and grant him a certificate, the purchaser ought to ascertain that the decree under which the sale was ordered is still in existence. BASAPPA *v.* DUNDAYA . I. L. R., 2 Bom., 540

282. ———————— *Sale in execution pending appeal from decree—Application for confirmation of sale after reversal of decree—Court not competent to grant confirmation—Civil Procedure Code, s. 312.*—Where a sale in execution of a decree has taken place pending an appeal, and the decree has subsequently been reversed, the Court executing the decree cannot, after such reversal, grant confirmation of the sale. *Basappa bin Maiappa Ali v. Duntaya bin Shidlingaya, I. L. R., 2 Bom., 540,* referred to. MUL CHAND *v.* MUKTA PRASAD . . I. L. R., 10 All., 83

283. ———————— *Remedy of parties aggrieved—Suit for reversal of sale.*—When a property is sold in execution of a decree which had been in force at the time of sale, but which was eventually set aside on appeal, the remedy of the party aggrieved is by a suit for the reversal of the sale, and not by a suit for the recovery of damages for the loss sustained. ANNUNDO CHUNDER BANERJEE *v.* SHUBHUL CHUNDRA DEBEA . 2 Hay, 624

284. ———————— *Right to recover land.*—A sale in execution of a decree, made

MOOKERJEE . . . . . W. R., 1864, 120

285. ———————— *Suit to recover possession—Return of purchase-money.*—*A* had sued *R* and others for possession of two mouzahs with mesne profits and obtained a joint decree against them in the absence of *R*. In execution *A* was about to put up the rights and interest of *R* in mouzah G when *R* applied for a re-trial under Act VIII of 1859, s. 119. The petition was rejected and the

defendants without offering to pay them the debt which he owed them, and which formed part of the consideration money. GOWREE BOYJO NATH PERSHAD *v.* JODHA SINGH. . 19 W. R., 416

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

286. ——————— *Suit for possession against auction-purchaser by setting aside sale —Civil Procedure Code (Act X of 1877), s. 244* — In execution of a decree certain property was sold in pursuance of an order under s 244 of the Civil Procedure Code, and purchased by a person not a party to the suit, who subsequently obtained possession of the property. That order was subsequently set aside In a suit by the judgment-debtor to recover possession of the property from the auction-purchaser by setting aside the sale.—*Held* that the order directing the sale had the force of a decree, and that the plaintiff was not entitled to the relief claimed. *Jan Ali v Jan Ali Chowdhry, 1 B L R., A. C., 56 10 W. R., 154,* followed MURARI SINGH *v.* PRYAG SINGH . . . . I. L R., 11 Calc., 362

287. ——————— *Ex-parte decree the validity of which is impeached—Notice to purchasers.*—In a suit by S in his own right as well as on behalf of his minor brother, to cancel an execution-sale held in execution of an *ex-parte* decree, to cancel the said decree and two bonds entered into by members of their family during the plaintiff's minority, and to recover possession of a share in the ancestral property which had been sold, it was found that the advances of money for which the bonds were executed were made without proper inquiries as to the necessity for the loan, and that the minors were not properly represented in the suit in which the *ex-parte* decree

[20 W. R., 120

Where no such notice has been given, the sale would continue valid. RAM JEWUN LALL *v* SHAM LALL MISSER . . . . 20 W. R., 123

288. ——————— *Effect of reversal of decree upon sale in execution—Sale to bond fide purchaser, not a party to the decree, distin-*

which the sales took place, and those who were *bonâ fide* purchasers at other sales, under the same decree, who were no parties to it. *Held* that, as against the latter purchasers, whose position was different from that of the decree-holding purchasers, the suit must be dismissed. ZAIN-UL-ABDIN KHAN *v.* MUHAMMAD ASGHAR ALI KHAN

[I. L. R., 10 All., 166
L. R., 15 I. A., 12

289. ——————— *Civil Procedure Code (1882), ss. 108, 244, and 314—Sale in execution of an ex-parte decree and purchase by the decree-holder—Confirmation of the sale—Subsequent setting aside of the ex-parte decree—Application by a subsequent purchaser in execution of another decree to set aside the sale on the ground that the ex-parte decree had been set aside* —Certain immoveable properties were sold in execution of an *ex-parte* decree and were purchased by the decree-holder himself. After the confirmation of the sale, the decree was set aside under s. 108 of the Civil Procedure Code at the instance of some of the defendants in the original suit. On an application under s. 244 of the Civil Procedure Code having been made by a prior purchaser of the said properties in execution of another decree, to set aside the sale held in execution of the *ex-parte* decree, the defence was that the application could not come under s. 244 of the Civil Procedure Code, and that the sale could not be set aside, as it had been confirmed. *Held* that the case was one under s 244 of the Civil Procedure Code; and that the *ex-parte* decree having been set aside, the sale could not stand, inasmuch as the decree-holder himself was the purchaser *Doyamoyi Dasi v. Sarat Chunder Mozoomdar, I. L. R., 25 Calc., 175, Beni Persad Koeri v. Lakhi Rai, 3 C W. N., 6 ; Durga Charan Mandal v. Kali Prasanno Sarkar, I. L. R., 26 Calc., 727 ; Nawab Zainal ub-din Khan v. Mahammed Asghar Ali, L. R, 15 I. A., 12 I. L. R., 10 All., 166 ;* and *Mina Kumari Bibee v. Jagat Sattani Bibee, I. L. R, 10 Calc., 220,* referred to. SET UMEDMAL *v* SRINATH ROY

[I. L R., 27 Calc., 810
4 C. W. N., 692

(f) DECREE FOUND TO HAVE BEEN SATISFIED.

290. ——————— *Purchase by*

in the case that the purchase of the decree by one of the debtors was a satisfaction of the decree,—*Held,* in a suit against the execution purchaser to have the sale declared invalid, that the sale must be set aside. DIGAMBUREE DEBIA *v.* ESHAN CHUNDER SEIN

[15 W. R., 372

291. ——————— *Order for sale and sale in execution under a decree previously satisfied.*—An order for sale and a sale under such

SALE IN EXECUTION OF DECREE
—*continued*

16. INVALID SALES—*continued*.

order are *ultra vires* and nullities if the decree which is ordered to be executed has been satisfied by payment into Court of the decretal money before the order is made. CHUNNI *v.* LALA RAM

[I. L. R., 18 All., 5

292. ——————— *Sale in execution of decree already satisfied—Bonâ fide purchaser at such sale—Right of such purchaser*—Where a person, a stranger to the proceedings purchases property *bonâ fide* at an auction sale held in execution of a decree, the sale to him cannot be set aside on the ground that the decree had already been satisfied out of the Court at the time the sale was held. *Rewa Mahton v. Ram Kishen, I. L. R., 14 Calc., 18: L. R., 13 I. A., 106*, and *Mothura Mohun Ghose v. Akhoy Kumar Mitter, I. L. R., 15 Calc., 557*, followed. YELLAPPA *v.* RAMCHANDRA

[I. L. R., 21 Bom., 463

293. ——————— *Mortgage decree, Sale in execution of—Purchase by a third party while the decree and the order for sale are valid—Effect on sale of reversal of ex-parte decree—Right of redemption of mortgagor*—A mortgagor is not entitled to redeem the property which was purchased by a third party at a sale held in execution of an *ex-parte* mortgage-decree and confirmed whilst the *ex-parte* decree was still in force, though the said decree was set aside and subsequently re-affirmed after trial MUKHODA DASSI *v.* GOPAL CHUNDER DUTTA . . . . I. L. R., 26 Calc., 734

MUKHODA DASI *v.* HEM CHUNDER BHATTACHARJEE . . . . . . 3 C. W. N., 766

See ZAINULABDIN KHAN *v.* MUHAMMAD ASGHAR ALI KHAN

[I. L. R., 10 All., 166: L. R., 15 I. A., 12

294. ——————— *Civil Procedure Code, 1877, s 246—Execution of cross-decrees—Power of Court executing decree—Bonâ fide purchaser—Presumption of validity of order for sale.*—If a Court ordering a sale in execution of a decree has jurisdiction, a purchaser of the property sold is not bound to inquire into the correctness of the order for execution any more than into the correctness of the judgment upon which the exe-

issued, has been satisfied or not. These are questions to be determined by the Court issuing execution. Where property, sold in execution of a valid decree, under the order of a competent Court, was purchased *bonâ fide* and for fair value,—*Held* that the mere existence of a cross-decree for a higher amount in favour of the judgment-debtor, without any question of fraud, would not support a suit by the latter

against the purchaser to set aside the sale. REWA MAHTON *v.* RAM KISHEN SINGH

[I L R., 14 Calc., 18
L. R., 13 I. A., 106

295. ——————— *Title of auction-purchaser—Purchaser whether bound to enquire into the validity of the order under which the sale takes place.*—Where under a decree upon a mortgage the sale of certain property is ordered, and such property is sold at auction in pursuance of such order, and the sale is confirmed, the auction purchaser takes a good title, even though the decree was one which the Court ought not to have made. The purchaser at a sale under a decree is under no obligation to look behind the decree to see whether the decree has been rightly made *Matadin Kasodhan v.*

296. ——————— *Suit to set aside sale—Fraud—Auction-purchaser acting bonâ fide—Fraudulent execution of a decree after adjustment—Execution of decree adjusted, but of which satisfaction has not been entered, Effect of, on rights of innocent purchaser—Adjustment of decree without certifying.*—In 1881 *R* obtained a decree against *M* for possession of certain property with costs Subsequently a compromise of the questions at issue in the suit was come to between *R* and *M*, one of the terms of which was that *R* gave up his claim to costs. Satisfaction of the decree was not entered up in Court. In 1884 *K*, purporting to

found that *A*'s purchase was an innocent one and untainted with fraud. *Held*, upon the authority of *Rewa Mahton v. Ram Kishen Singh, L. R., 13 I. A., 106: I. L. R., 14 Calc., 18*, that the sale could not be set aside. Such a sale could only be set aside if it were shown that the Court had no jurisdiction to execute the decree; but as the decree remained an unsatisfied decree so far as the Court was concerned, and capable of being executed, the compromise not having been certified to the Court, the Court had jurisdiction to execute it *Pat Dasi v. Sharup*

neither the Court nor the auction-purchaser was bound to see that the application was made *bonâ fide*

SALE IN EXECUTION OF DECREE
—*continued.*

16. INVALID SALES—*continued.*

on his behalf. MOTHURA MOHUN GHOSE MONDUL v. AKHOY KUMAR MITTER I. L. R., 15 Calc., 557

(*g*) DECREES AGAINST WRONG PERSONS.

297. ——————— *Right to have sale set aside where decree was against wrong person as representatives—Subsequent claim by proper representative—Estoppel—Quiescence.*—One *S* died indebted to the second defendant, *M*. On his death his widow, *T*, became his heir, as he left neither son nor brother surviving. In 1878 *M* brought a suit to enforce payment of the debt due by the deceased *S*, and he made *R*, the mother of *S*, defendant in the suit, omitting *T* altogether. On 30th August 1878 *M* obtained an *ex-parte* decree, and on the 26th July 1880 the house of *S*, then in the possession of *B*, was sold in execution, and the first defendant, *R*, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R* was put into possession. On the 10th of December 1880 one *S* presented a petition on behalf, as he alleged, of the plaintiff *T* the widow of *S*, to set aside the sale. He did not produce any authority from her, and his application was rejected on the 14th June 1881. On the 31st October 1878 *T* adopted the plaintiff *B* under an authority, as she alleged, of her deceased husband *S*. In 1881 *T* filed the present suit on behalf of her adopted son, *B*, to set aside the sale and to recover the house. *Held* that the plaintiff was entitled to have the sale set aside and to recover possession of the house. The estate was vested in *T* as legal representative of her deceased husband. Had *T* wilfully put forward *B* as the representative of *S* so as to deceive and mislead *M*, then, no doubt, she might be held bound by the decree obtained by the latter against *B*. Her mere quiescence while *M* wilfully sued the wrong person could not affect her legal rights, or deprive her adopted son, the plaintiff *B*, of his rights. He could not be bound by a suit and sale to which he was not a party either in person or by representation. BASWANTAPA SHIDAPA v. RANU

[I. L. R., 9 Bom., 86

(*h*) DECREE WITHOUT POWER OF SALE.

298. ——————— *Sale under decree giving no power of sale—Partition of tarwad—Tarwad debt—Construction of decree—Decree explained by judgment.*—In 1870 the managers of the plaintiff's tarwad demised certain land n w in suit on kanom. In 1885 they sued to redeem the kanom, and a decree was passed that the plaintiff do pay a certain sum ... under the land, ... the kanom at ... In 1886 the ... bove referred to was allotted to the present plaintiff's branch. In 1887 the kanomdar in execution of the above decree, brought the land to sale, and it was purchased by defendant 1. *Held* that the sale was not binding on the plaintiff. SANKARA v. KELU

[I. L. R., 14 Mad., 29

SALE IN EXECUTION OF DECREE
—*continued.*

16. INVALID SALES—*continued.*

(*i*) DECREE AMENDED AFTER EXECUTION.

299. ——————— *Civil Procedure Code (Act XIV of 1882), s. 206—Amendment of decree after execution.*—In a suit for money against the karnavan and two anandravans of a Malabar tarwad, the judgment directed a "decree for the plaintiff as prayed," but the decree ordered payment by one anandravan only. Land belonging to the tarwad was attached and sold in execution, an objection by the other members of the tarwad having been overruled. After the sale, the decree was amended and brought into conformity with the judgment. In a suit brought by other members of the tarwad against the karnavan, the decree-holder and the execution-purchaser, it was found that the judgment-debt had been contracted for proper tarwad purposes, and that the land had been sold for its proper value. *Held* that the sale was binding on the plaintiffs. PYDEL v. CHATHAPPAN

[I. L. R., 14 Mad., 150

See CHATHAPPAN v. PYDEL

[I. L. R., 15 Mad., 403

(*j*) WANT OF SALEABLE INTEREST.

300. ——— Civil Procedure Code, 1877, s. 313—*Purchase knowing judgment-debtor has no interest.*—A person who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein is not entitled to the benefit of the provisions of s. 313 of Act X of 1877, which were designed for the protection of persons who innocently and ignorantly purchased valueless property. MAHABIR PRASHAD v. DHUMAN DAS

[I. L. R., 3 All., 527

301. ——— Civil Procedure Code, 1882, s. 313—*Setting aside sale—"Saleable interest."*—The fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property within the meaning of s. 313 of the Civil Procedure Code. *Naharmul Marwari v. Sadut Ali, 8 C. L. R., 468,* distinguished. PROTAP CHUNDER CHUCKERBUTTY v. PANIOTY

[I. L. R., 9 Calc., 506 : 12 C. L. R., 488

302. ——————— *Application to set aside sale—"Saleable interest."*—A misrepresentation or concealment in the sale notification which induces a purchaser to buy a property for much more than it is really worth (although that misrepresentation or concealment may be fraudulent), is no ground for setting aside a sale under s. 313 of the Civil Procedure Code. The meaning of s. 313 is, that when a purchaser under an execution sale buys a property which turns out to have no

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under s 313. DURGA SUNDARI DEVI *v.* GOVINDA CHUNDRA ADDY . . . I. L. R., 10 Calc., 368

303. ——— *Decree against insolvent—Official Assignee—Purchaser at execution-sale—Setting aside sale.*—Where, in execution of a decree passed against a person who had previously been adjudicated an insolvent, portions of his property (then vested in the Official Assignee) are attached and sold, the purchaser is entitled to have the sale set aside under s 313 of the Code of Civil Procedure, notwithstanding that the Official Assignee acquiesces in the sale, and is content to receive the sale-proceeds. DINOBUNDHOO PAL *v.* SHOSHEE MOHUN PAL . I. L. R., 9 Calc., 217

S C DENOBUNDHOO PAL *v* SHUSHI MOHUN PAL CHOWDHRY . . . 12 C. L R., 60

S C. RAM SOONDUR DEY *v.* SHOSHI MOHUN PAL CHOWDHRY . . . . 11 C. L. R., 389

[illegible]

March again sold in execution of the second decree, it being alleged that the property was covered by the mortgage which was prior in date to the former decree. The appellant thereupon applied that the sale of the 21st March should be set aside under s 313 of the Civil Procedure Code, and his purchase-money directed to be returned to him *Held* that if, as a fact, the property sold was covered by the mortgage, there was, under the circumstances, no such saleable interest in the judgment-debtor at the time of the sale on the 21st February 1880 as would prevent the operation of s. 313 of the Civil Procedure Code, inasmuch as under that sale the pur- [illegible]

305. ——— *Sale under attachment during subsistence of prior attachment—Saleable interest* —In execution of a decree obtained on the 15th August 1876, the property of the judgment-debtor was attached on the 17th August 1877. The sale of the attached property was postponed, pending a suit instituted under the direction of the Court by a claimant to the attached property This suit having been dismissed on the 13th September 1878, the decree-holder on the 25th September applied for a sale of the property, and the 16th December was fixed for the sale Meanwhile, on the 13th December 1877, a decree had been obtained by another party against the judgment debtor, and in execution of this decree the same property was attached on the 13th September 1878, and under this attachment a sale took place on the 15th November following. On the 16th December, as fixed, the property was again sold under the first attachment [illegible]

6th [illegible]

Proc [illegible]

that [illegible]

Held [illegible]

on the authority of the following cases: *Gogaram v Kartick Chunder Singh, B. L. R., Sup. Vol., 1022 9 W. R., 514; Lalla Joogul Lall v. Bhukha Chowdhry, 9 W. R., 244,* and *Kartick Chunder Singh v Gogaram, 2 W. R., Mis., 49,* which the Court felt bound to follow, while it doubted their correctness,—that the sale must be set aside CHUTKA PANDA *v.* GOBURDHONE DASS . 6 C. L. R., 85

306. ——— *Debtor having* [illegible]

OF THE PETITION OF RAM COOMAR DEY. RAM COOMAR DEY *v.* SHUSHEE BHOOSHUN GHOSE [I. L. R., 9 Calc., 626

307. ——— *Judgment-debtor —Representative—Sale of immoveable property—Setting aside sale.*—In the event of the death of the judgment-debtor, notice must issue to his representative before the sale of immoveable property can be set aside under s. 313 of the Code of Civil Procedure, albeit that the section makes no express provision for the appearance of the representative BALA KADAR *v.* GULAM MOHIDIN [I. L. R., 7 Bom., 424

308. ——— *Civil Procedure Code, ss. 213, 220—Transfer of execution of decree to Collector—Jurisdiction of Civil Courts to entertain application under s. 313—Rules prescribed by Local Government under s 320—Notification No 671 of 1880, dated the 30th August.*—*Held* that an application under s 313 of the Civil Procedure Code by the purchaser at a sale in execution of a decree which had been transferred for execution to the Collector in accordance with the rules prescribed by the Local Government was entertainable by the Civil Courts, and the Collector had no jurisdiction under the Code or under Notification No 671 of 1880 to entertain it. *Madhu Prasad v. Hansa Kuar, I. L R., 5 All, 314,* referred to. NATHU MAL *v* LACHMI NARAIN [I. L. R., 9 All., 43

See KESHARDEO *v* RADHE PRASAD [I. L. R., 11 All., 94

309. ——— *Civil Procedure Code, s 313 Setting aside sale in execution of decree – Incumbrance.*—The fact that property sold in execution of a decree is incumbered, even when the

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no saleable interest therein. S. 313 of the Civil Procedure Code contemplates that either the judgment debtor had no interest at all, or that the interest was not one he could sell, and the fact that the property may fetch little or nothing if sold does not affect the question *Nahormal v. Sirut Ali, 8 C. L. R., 468*, distinguished. *Protap Chunder Chuckerbutty v. Panioty, I. L. R., 9 Calc., 506*, referred to. SANT LAL v. RAMJI DAS . . I. L. R., 9 All., 167

(*k*) SALE CONTRARY TO LAW.

310. ———————— *Sale in contravention of the provision of the Transfer of Property Act (IV of 1882), s. 99 - Sale by mortgagee in execution of decree.*—Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors, a separate suit was brought by the mortgagors to set aside the sale as being in contravention of s. 99 of the Transfer of Property Act *Held* that, although the sale was contrary to the provisions of s. 99 of the Transfer of Property Act, that section being for the benefit only of a particular class of persons, namely, those concerned with a right to redeem mortgaged property, such a sale was not void, but voidable. MAYAN PATHUTI v. PAKURAN . . I. L. R., 22 Mad., 347

See MARTAND BALKRISHNA BHAT v. DHONDO DAMODAR KULKARNI . I. L. R., 22 Bom., 624

and ERUSAPPA MUDALIAR v. COMMERCIAL AND LAND MORTGAGE BANK . I. L. R., 23 Mad., 377

311 [illegible]

not party to suit to redeem his share—Rights of Hindu debtor's son after attachment and sale.—In 1848 an annuity had been settled on plaintiff's ancestor and his heirs in consideration of his withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity. Instalments due under the bond having fallen into arrears, a suit was brought in 1889 in respect of them, and a decree obtained, which contained a provision that the right to the annuity should be liable to be proceeded against for the amount so due. Plaintiff was born in 1891. In 1893 an application was made for the issue of a proclamation of sale, and [illegible]

was, on its true construction, not a decree for sale, the case was one of attached property being sold at the instance of the mortgagee in execution of a money-decree, and so within the prohibition of s. 99 of the Transfer of Property Act. The conditions under which a sale of mortgaged property is permissible under that section are not satisfied unless there is a decree for sale, and in the absence of such decree, the sale is prohibited; that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; that the rights of a Hindu debtor's son may be concluded by a proper mortgage decree and sale thereunder, or, if [illegible]

cedure; and that plaintiff was entitled to a decree for the redemption of his share. MUTHURAMAN CHETTI v. ETIAPPASAMI . I. L. R., 22 Mad., 372

(*l*) WANT OF JURISDICTION.

312. —— - Effect on validity of sale—*Property attached in execution of decrees of Munsif and District Judge—Sale of property under order of Munsif—Civil Procedure Code, 1882, s. 285.*—Where certain immoveable property, which had been attached in execution of two decrees, one made by a Munsif and the other by the District Court to which such Munsif was subordinate, was sold under the [illegible]

313. ———————— *Civil Proce-* [illegible]

decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the Court of the highest grade where such Courts are of different grades, or the Court which first effectuated the attachment where such Courts are of the same grade, is, under s. 285 [illegible]

ment-debtor was attached in execution of several [illegible]

having been made in pursuance of the order of a Court which had no jurisdiction to direct it. IN

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

THE MATTER OF THE PETITION OF BADRI PRASAD. BADRI PRASAD *v.* SARAN LAL

[I. L. R., 4 All., 359

314. ——————— *Civil Procedure Code (1882), s. 285—Attachment of the same property by two Courts of different grades.*—The operation of s 285 of the Code of Civil Procedure is not affected by the fact that prior to the attachment made by the Court of higher grade, proceedings subsequent to attachment may have taken place in the Court of lower grade in execution of the decree of that Court *Badri Prasad v. Saran Lal, I L. R., 4 All, 359, Aghore Nath v. Shama*

315. ——— ——— *Civil Procedure*

316. ——————— *Civil Procedure Code, 1877 (1882, s. 285)—Attachment and sale in execution of decrees of several Courts.*—Certain immoveable property was attached in execution of a

purchaser, the Munsif made an order confirming such sale. *Per* SPANKIE, *J.*—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil

confirm such sale; but, inasmuch as the Subordinate

317.—————— *Civil Procedure Code, 1882, s. 285—Immoveable property—Attachment by superior Court—Sale by inferior Court—Title of purchaser.*—The provisions of s 285 of the Code of Civil Procedure, 1882, apply to immoveable property. Where a house, while under an attachment issued by a Subordinate Judge's Court in execution

of s. 285 of the Code of Civil Procedure, 1882. MUTTUKARUPPAN CHETTI *v.* MUTTURAMALINGA CHETTI **I. L. R., 7 Mad., 47**

318. ——— ——————*Jurisdiction of Munsif—Bengal Civil Courts Act (VI of 1871), s 18—Attachment—Civil Procedure Code (Act X of 1877), s. 285.*—*A*, who had obtained a decree in the Court of the Second Munsif of B, in September 1877 attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge under s 18 of Act VI of 1871 In the previous month, *C*, who had obtained a decree in the Court of the Additional Munsif of B (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of *A*'s decree took place first, and *A* became the purchaser. *A* then

and he became the purchaser. *A* brought various suits against the tenants for arrears of rent in which *C* intervened. *Held* that the jurisdictions of the

and that the attachment by *C* was made improperly and without jurisdiction *Quære*—Whether s. 285 of the Civil Procedure Code applies to immoveable property OBHOY CHURN COONDOO *v.* GOLAM ALI *alias* NOCOURY MEAH

[I. L. R., 7 Calc., 410: 9 C. L. R., 361

319. —— ——————— *Civil Procedure Code, 1882, ss. 285, 295—Jurisdiction—Sale by inferior Court pending an unknown attachment by a superior Court.*—At an execution sale held by an inferior Court, at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), *A* purchased certain property and this sale was confirmed. It ap-

which *A* again became the purchaser *A* then brought a suit against the decree-holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale. The suit was dismissed. *Held* that, although the superior

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

Court had been wrong in insisting on the second sale and in not requiring the amount received by the

320. —————— *Sale under two different decrees of different Courts of different grades—Civil Procedure Code, 1882, s 295.*—The first mortgagee of certain immoveable property

321.—————— *Sale under decree by two Courts, first a Revenue Court, and then a Civil Court—N.-W. P. Rent Act (XII of 1881), ss. 170, 171, 172—Civil Procedure Code, 1882, s. 285—Effect of section in conflict between Civil and Revenue Courts.*—*Held* that the procedure prescribed by s. 285 of the Code of Civil Procedure,

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

Civil Court. *Onkar Singh* v. *Bhup Singh, I. L. R., 16 All., 496*; *Aulia Bibi* v. *Abu Jafar, I. L. R., 21 All., 405*; and *Madho Prakash Singh* v. *Murli Manohar, I. L. R., 5 All., 406*, referred to RAGHUBAR DAYAL *v.* BANKE LAL . I. L. R., 22 All., 182

322. —————— *Attachment of immoveable property in execution of decrees of two*

in a certain jumma. The share was subsequently sold in execution of the plaintiff's decree on the 20th

the share was attached at the defendant's instance on

in the defendant's execution proceedings in the Court

followed; *Badri Prasad* v. *Saran Lal, I. L. R., 4 All., 359*; *Aghore Nath* v. *Shama Sundary, I. L.*

323. —————— *Civil Procedure Code (1882), ss. 285 and 295—Concurrent decrees—Distribution of assets among several decree-holders—Sale in execution by inferior Court of property while under an attachment issued by superior Court*—On the 9th October 1891 *A* obtained a decree

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

against *B* in the Court of the First Class Subordinate Judge of Surat. On the 13th October 1891 *C* also obtained a decree against *B* in the Court of the Second Class Subordinate Judge at Surat and immediately, *viz.*, on the 16th October 1891, applied for

October 1891, and *B*'s property (with respect to

good. NARANJI MORARJI *v.* HARIDAS NAVALRAM [I. L. R., 18 Bom., 458

324. ———— *Civil Procedure Code (1882), s. 285—Money attached in execution in two Courts—"Court of highest grade"—Munsif's Court—Small Cause Court.*—In the North-Western Provinces the Court of a Munsif must, for the purposes of s 285 of the Code of Civil Procedure, be regarded as of a higher grade than a Court of Small Causes So *held* by EDGE, C J., TYRRELL, BURKITT, and AIKMAN, JJ. (KNOX, J., dissenting)

"grade" being instituted between them for the purposes of s. 285 of the Code of Civil Procedure. BALLU RAM *v.* RAGHUBAR DIAL [I. L. R., 16 All., 11

325. ———— *Attachment and proclamation of sale in execution of decree of Small Cause Court—Subsequent application for execution of decree of first class Subordinate Judge—Civil Procedure Code (1882), s 285—Sale by inferior Court of property while under attachment issued by superior Court.*—*G* obtained a decree against *M* in the Small Cause Court of Surat, and in

however, under the Small Cause Court decree were continued, and the debt was sold in execution and was

SALE IN EXECUTION OF DECREE —*continued.*

16 INVALID SALES—*continued.*

purchased by the applicant. *Held*, following *Naranji Morarji* v. *Haridas Navalram, I. L. R.*, 18 Bom. 458

depends upon "the pecuniary or other limitations" of the

fore, a

the Sm

Court

MUKLAL HARKISANBAI *v.* KALYANDAS KHUSHAL [I. L. R., 19 Bom., 127

326. ———— *Decrees of different Courts against same judgment-debtor—Leave given by both Courts to judgment-debtor to*

applied to the First Class Subordinate Judge in Belgaum, under s 295 of the Civil Procedure Code, for confirmation of the sale, and that the purchase-money paid by him should be distributed as follows, *viz*, R518-14-2 in satisfaction of the decree of the Belgaum Court, R128-7-10 in satisfaction of the decree of the Saundatti Court, and the balance, R1 352-10-0, to be paid to *V* The Court of Belgaum granted the application, and directed that the above sum of R128-7-10 should be paid into the Court of Saundatti On the 17th July 1893 *A* applied to the Court at Saundatti to confirm the sale already confirmed by the Belgaum Court, and he brought into Court the said sum of R128-7-10 On the 19th June 1893, while the above proceedings were going on, a third decree holder (the

the objection and refused confirmation of the sale The applicant then applied to the High Court under

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued.*

its extraordinary jurisdiction. *Held* that the Judge of the Belgaum Court had concurrent jurisdiction to sell and confirm the sale notwithstanding the execution and leave to sell by the Saundatti Court. The application to the Saundatti Court by *A* was therefore superfluous and ought to have been rejected, inasmuch as the sale had already been confirmed by a competent Court (*viz*, the Court of Belgaum), and nothing further remained to be done in regard to it. ANDANAPA *v* BHIMRAO ANNAJI

[I. L. R., 19 Bom., 539

327. ———————— *Attachment of*

Judge at Surat. *B*'s decree was obtained in the Small Cause Court at Surat. In execution of their respective decrees, both *A* and *B* obtained orders of attachment on the same day of a certain debt due to *C* by the Municipality of Surat. Notice of the attachment was given by the Subordinate Judge to the Small Cause Court, under s 285 of the Civil Procedure Code (Act XIV of 1882) On the 16th November 1893 the Subordinate Judge issued an order for sale of the attached debt, and on the 18th December the Small Cause Court issued a similar

cipality, making the defendant a party, and he also obtained a decree which was confirmed by the District

the Small Cause Court was an act done in the irregular exercise of admitted jurisdiction. But when property is attached by more Courts than one, although each has jurisdiction to sell, that jurisdiction should be exercised by the Court of the highest grade

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

I. A., 111. If he purchases with notice, he runs the risk of his purchase being set aside. ABDUL KARIM *v.* THOKORDAS TRIBHOBAN DAS

[I. L. R, 22 Bom., 88

328. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 15, 285—Sale in execution by inferior Court of property already under an attachment by a superior Court—Jurisdic-*

B's property on the 16th March 1891; the property was sold on the 20th April 1891 and purchased by *C*, who obtained possession of it on the 3rd of August 1891, and then sold his interest to the plaintiff. At the same time the defendant *R* had a decree for costs against *B* and his heirs in the Court of the Subordinate Judge of Monghyr, and in execution thereof attached the same property on the 4th February 1891, and sold it on the 24th August 1891, *i e*, about four months after the sale of the property by the Munsif. The plaintiff sued for possession on the ground that, having purchased the property of *B* before the second sale by the

section for procedure to prevent different claims arising out of the attachment and sale of the same property by different Courts. *Bykant Nath Shaha v Rajendra Narain Rai, I. L. R., 12 Calc., 333; Dwarka Nath Das v. Banku Behari Bose, I. L. R., 19 Calc, 651;* and *Patel Naranji Morarji v. Haridas Naralran, I. L. R., 18 Bom, 458,* referred to. RAM NARAIN SINGH *v.* MINA KOBRY

[I. L R., 25 Calc., 46

329. ———————— *Civil Procedure Code (1882) s. 285—Attachment of same property by different Courts—Sale by both Courts—Titles of the respective purchasers.* — Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, s. 285 of the Code of Civil Procedure does not take away

SALE IN EXECUTION OF DECREE —*continued*

16. INVALID SALES—*continued.*

the jurisdiction of the inferior Court, and any proceedings by such inferior Court in contravention of that section will be vitiated only where there has been notice of the proceedings in the superior Court. KUNHAYAN *v.* ITHUKUTTI

[I. L. R., 22 Mad., 295

330. ——————— *Mortgage-decree for sale of properties in different districts and jurisdictions—Civil Procedure Code (Act XIV of*

of certain properties situated in the districts and jurisdictions of Rajshahye and Nyadumka, directed that the properties mentioned in the mortgage

to make the order for the sale of the properties, and that the Rajshahye Court was within its jurisdiction in directing and carrying out the sale. *Quære*—Whether, where a sale takes place under a money-decree of property partly within the local limits of the Court whose decree is being executed and partly without that Court's jurisdiction, the sale of the property without the jurisdiction would be valid and binding in consequence of the provisions of ss 19 and 223 of the Code of Civil Procedure. MASEYK *v.* STEEL & Co. I. L. R., 14 Calc., 661

331. ——————— *Property outside jurisdiction of Court executing decree—Code*

gage-decree purchased the mortgaged property with leave of the Court Before the order of sale was passed, the mortgaged property had been transferred by an order of Government to the jurisdiction of another Court *Held* by the Full Bench that the sale must be set aside as being without jurisdiction *Kamini Soondari Chowdhrani* v. *Kali Prosonno Ghose, L. R., 12 I. A., 215 I L R., 12 Calc., 225,* followed. PREM CHAND DEY *v.* MOKHODA DEBI

[I. L. R., 17 Calc, 699

See DAKHINA CHURN CHATTOPADHYA *v* BILASH CHUNDER ROY . . I. L R, 18 Calc., 526

332. ——————— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 13, cl 3—Civil Procedure Code (1882), s. 25—Transfer of civil case* —A suit on a mortgage-bond, praying for the decree for sale, was transferred under s. 25 of the Civil Procedure Code from the Court of the Second Subordinate Judge to that of the Third Subordinate Judge in the district for trial in that Court The suit was decreed, and an order for sale was passed by the Third Subordinate Judge After the sale, an application was made to set it aside on the ground, *inter alia*, that the Court of the Third Subordinate Judge had no jurisdiction to sell the property, it being within the local jurisdiction of the Second Subordinate Judge's Court. The jurisdiction of the Third Subordinate Judge to try the suit was not questioned *Held* that s 13, cl. 3, of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887) dealt with matters of this description, and the Court which passed the decree and the order for sale had jurisdiction to hold the sale. *Prem Chand Day* v *Mokhoda Debi, I. L. R., 17 Calc., 699,* distinguished. *Gopi Mohan Roy* v. *Doybaki Nundun Sen, I. L. R, 19 Calc, 3,* and *Tincowrie Debya* v. *Shib Chandra Pal Chowdhury, I. L. R., 21 Calc., 639,* referred to. JAJERNATH SAHAI *v.* DIP RANI KOER . . I. L. R., 22 Calc., 671

TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY . . . I. L. R., 21 Calc., 639

333. ——————— *Decree set aside as made without jurisdiction*

selves null and void, and that it did not require any order in words to set aside the sale which they involved. ONUNGO MOONJUREE DOSSIA *v.* PUNCHANAN BOSE . . . . . 12 W. R., 72

334. ——————— *Decree after-*

B. The decree was, after the sale, set aside as having been passed without jurisdiction In a suit by *A* against *B* for confirmation of possession, on the ground that *B* was about to take possession of the property under the purchase,—*Held* that the sale in execution was a nullity, as the decree had been passed without jurisdiction. *Jan Ali* v. *Jan Ali Chowdhry, 1 B. L R, A C, 56 10 W R, 154,* and *Peareemonee Dossee* v *Collector of Beerbhoom, 8 W R., 309,* distinguished JADU NATH KUNDU CHOWDRY *v.* BRAJA NATH KUNDU

[6 B. L. R., Ap, 90

335. ——————— *Sale by Sheriff ultra vires—Right of purchaser.* Where the Sheriff sells under a *fi fa* property which could not legally be sold,—*e.g.*, an equity of redemption,—*Held* the sale was null and void, and the purchaser took nothing by his purchase When therefore the purchaser was also a mortgagee who was in right of his purchase put into possession,—*Held* that, notwithstanding his possession, the right of redemption still existed, and he must be taken to have been in possession as mortgagee only HURRO PERSHAD GHOSAL *v.* HURRO MONEE DEBEE 8 W. R., 210

336. ——————— *Sale of ancestral land by order of the Court—Act X of 1877*

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

transferred to the Collector; and such property was

337. ———— *Fieri facias, Writ of—Sheriff, Jurisdiction of.*—Inasmuch as

under a writ of *fieri facias* issued subsequently to 1865. *Monomothonath Dey* v *Greender Chunder Ghose, 24 W. R., 366,* cited. GRISH CHUNDER DAS *v.* BROJO JIBUN BOSE . 8 C. L. R., 4

338. ———— *Sale set aside*

issued prohibiting *V*, a party to the suit, from interfering with the property. In 1863 a decree was passed for the administration of the property under the direction of the High Court, and the injunction against

of the

the ma

in title

dant),

house

remained in possession from that date. *Held* in a suit brought on July 6th, 1878, to recover the pro-

This decision was afterwards reversed on review so far as it decided that the High Court prior to 1865

339. ———— *Suit to recover property sold in execution by Court not having jurisdiction—Civil Procedure Code, 1859, s. 257.*—

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

A suit to recover property alleged to have been sold in execution by a Court which had no jurisdiction was not barred by Act VIII of 1859, s. 257. KANHAYE SINGH *v.* OOMADHUR BHUTT . 21 W. R., 291

340. ———— *Sale of property for purpose of realizing Court-fees erroneously supposed to be due to Government—Ultra vires—Want of jurisdiction.*—An order for sale and a sale under such order are *ultra vires* and nullities when in fact there was no jurisdiction in the Court to make the order. *Ram Lall Moitra* v. *Bama Sundari Dabia, I. L. R., 12 Calc., 307,* referred to. BALWANT RAO *v.* MUHAMMAD HUSAIN [I. L. R., 15 All., 324

(*m*) DECREES BARRED BY LIMITATION.

341. ———— Suit to recover purchased

v. RUTTUN SINGH . . . 5 N. W., 242

See ZUMEER SIRDAR *v* ASSEEMOODDEEN SIRDAR [23 W R., 257

342. ———— Objection to validity of sale—*Civil Procedure Code, s. 230—Decree, Execution of, after lapse of*

Civil Procedure, 1877. GANGATHARA PANDITHAR *v.* RATHABAI AMMAL . I. L. R., 6 Mad., 237

343. ———— "Subsisting decree,"

344. ———— Effect on validity of sale —*Execution of decree barred at time of sale—Purchase of decree-holder.*—*G A* obtained a decree against *M.* Afterwards *L N*, who had obtained a decree against *G A*, attached the decree which he (*G A*) had obtained against *M*, and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by *L N* against *G A* was barred by limitation. *Held* that the execution of *L N*'s decree against *G A*, being

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

barred by lapse of time at the time of sale, the sale was invalid GOLAM ASGAR *v.* LAKHIMANI DEBI [5 B. L. R., 68 : 13 W. R., 273

345. ——— Separate suit for declaration that decree was barred by limitation at time of sale—*Right of suit.—A* sued for

barred by lapse of time. *B* had become the purchaser at such sale. *Held* that a suit would not lie for the purpose of having it determined that the execution of *B's* decree was barred. NOJABUT ALI CHOWDRY *v.* MOHA BUSSEEROOLAH CHOWDHRY [11 B. L. R., 42 : 20 W. R., 5

346. ——— Suit to recover property sold—*Sale set aside, execution of decree being found to be barred by limitation—Suit to recover*

347. ——— Right to deposit by judgment-debtor in execution-proceedings after execution of decree is barred—*Limitation—Money of moveable property deposited in Court to stay sale—Order for sale confirmed—No execution taken out within the three years after deposit*—When money or moveable property has been deposited in Court on behalf of a judgment-debtor in lieu of security, for the purpose of staying a sale in

years have elapsed since any proceedings have been taken in execution of the decree, and that the decree

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

trust for the decree-holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree. SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN . . I. L. R., 4 Calc., 6

S. C. SHEO GHOLAM SAHU *v.* KHUB LALL [2 C. L. R., 206

348. ——— Order setting aside sale after confirmation—*Certificate and confirmation of sale—Execution barred at time of sale—Position of auction-purchaser—Civil Procedure Code (Act X of 1877), s. 316—Act XII of 1879—Limitation Act (XV of 1877), sch. ii, art. 165*—A person

(n) SALE PENDING APPEAL.

349. ——— Sale of property released from attachment pending appeal from decree declaring property liable—*Civil Procedure Code, 1877, ss. 280, 283, and 545.*—S. 283 of the Code of Civil Procedure, 1877, does not constitute an exception to the procedure laid down by s. 545 When property has been released from attachment under s. 280 and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283 FATHULA *v.* MUNIYAPPA [I. L. R., 6 Mad., 98

350 ——— Decree setting aside sale—Second sale pending appeal to which decree-holder not made party—*Confirmation of first sale in appeal—Purchasers of the same property in execution of decree, Priority between—Laches of appellant in not obtaining stay of execution.*—

SALE IN EXECUTION OF DECREE —*continued*

16. INVALID SALES—*concluded.*

[illegible]

sale, and at a second sale held pending the appeal

[illegible]

I. L. R., [illegible] Calc., [illegible]

17. SETTING ASIDE SALE.

(a) GENERAL CASES.

[illegible]

(*a*), if he deposits 5 per cent of the purchase-money, including that deducted by the Court for poundage, and fulfils the requirements of cl (*b*), even though something more on account of the poundage was recoverable from him under the head of costs. MUTHU AYYAR *v.* RAMASAMI SASTRIAL [I. L. R., 20 Mad., 158

352. ——— Setting aside sale by

[illegible]

Code for rateable distribution, the person whose property has been sold is competent to have the sale set

[illegible]

S. 295 does not apply to a deposit made under s. 310A by the judgment-debtor. BIHARI LAL PAL *v.* GOPAL LAL SEAL . . 1 C. W. N., 695

353. ——— Sale under mortgage-decree—*Sale in execution of a money-decree, Effect of, before the sale in execution of mortgage-decree confirmed — Code of Civil Procedure (1882),*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

ss. 310A, 311, and 312—Effect of sale not being set aside either under s. 310A or 311 of the Code—A certain property was sold on the 16th August 1895 in execution of a mortgage decree, dated the 9th December 1892, and was purchased by *A*. In the meantime an eight-anna share of the said property was sold in execution of a money-decree and was purchased by *R* on the 22nd May 1893 On the 10th September 1895 the judgment-debtor applied to set aside the mortgage-sale under s. 311 of the

[illegible]

tion of [illegible] of the [illegible] also to [illegible] the pro[illegible] nate Judge allowed the petition and ordered the sale to be set aside upon the aforesaid terms. *Held* that, inasmuch as under s 312 of the Code of Civil Procedure *A* was entitled to have an order confirming the sale of the 16th August 1895, unless the sale

[illegible]

costs. *Brij Mohun Thakur* v. *Uma Nath Chowdhry, I. L. R., 20 Calc., 8,* referred to. KHETTER NATH BISWAS *v.* FAIZUDDIN ALI [I. L. R., 24 Calc., 682

354. ——— Amount payable incorrectly calculated by an officer of the Court—*Civil Procedure Code (Act XIV of 1882), s. 310A—Civil Procedure Code Amendment Act (V of 1894).*—The judgment-debtor within thirty days from the date of sale deposited in Court, under

[illegible]

an officer of the Court and has been deposited, an order setting aside the sale must be made by the Court as a matter of right; the Munsif therefore was justified in setting aside the sale. *Ugrah Lall* v. *Radha Pershad Singh, I. L. R., 18 Calc., 255,* referred to. MAKBOOL AHMED CHOWDHRY *v.* BAZLE SABAN CHOWDHRY I. L. R., 25 Calc., 609

See ABDOOL LATIF MOONSHI *v.* JADUB CHANDRA MITTER . . . I. L. R., 25 Calc., 216

SALE IN EXECUTION OF DECREE —*continued*

17. SETTING ASIDE SALE—*continued.*

355. ———— *Civil Procedure Code (1882), s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Power of a Court to set aside a sale if the deposit provided for in s. 310A be not paid within thirty days*—*Held* (by the Full Bench).—Where the judgment-debtor has not within thirty days from the date of sale deposited in Court a sum equal to 5 per cent of the purchase-money and the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which

deposited in respect of such 5 per cent. and of the sum specified in such proclamation of sale, and there is nothing to show that there was any mistake of the Court by which the judgment-debtor was induced to deposit an insufficient amount, the sale ought not to be set aside. *Makbool Ahmed Chowdhry v. Bozle Sabhan Chowdhry, I. L. R., 25 Calc., 609,* distinguished. CHUNDI CHARAN MANDAL *v.* BANKE BEHARY LAL MANDAL I. L. R., 26 Calc., 449 [3 C. W. N., 283

356. ———— Application to set aside sale of mortgaged property—*Civil Procedure Code (1882), s. 310A—Execution of decrees—Transfer of Property Act (IV of 1882), s. 85.*—S. 310A of the Code of Civil Procedure applies where a sale of immoveable property has taken place under a mortgage-decree, so as to enable the owner of such property who duly complies with its provisions to have such sale set aside. Where the owner of immoveable property applies under that section to have a sale of property set aside, he is under a liability to deposit a sum equal to 5 per cent on the purchase-money, for payment to the purchaser, even where the land has been purchased by the decree-holder TIRUMAL RAO *v.* DASTAGHIRI MIYAH [I. L. R., 22 Mad., 286

357. ———— Actual receipt of sale-proceeds by decree-holder necessary to set aside a sale—*Civil Procedure Code (1882), s. 310A, as amended by Act V of 1894.*—The words in cl. (*b*) of s 310A of the Code of Civil Procedure as amended by Act V of 1894—" less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder "—contemplate an actual receipt of the amount by the decree-holder A mere payment of the sale-proceeds into Court does not satisfy the requirements of the section. A proclamation of sale ordered that for the recovery of R543-9-9 certain immoveable

the sale-proceeds into Court was not a sufficient compliance with the requirements of s 310A of the Code of Civil Procedure, and as it had not been shown that the sale-proceeds had been received by the decree-holder, the sale could not be set aside. TRIMBAK NARAYAN *v.* RAMCHANDRA NARSINGRAO [I. L. R., 23 Bom., 723

358 ———— Property sold in lots—*Civil Procedure Code (Act XIV of 1882), s. 310A—Deposit—Deposit sufficient to cause sale of one lot*—When at a sale in execution of a decree the properties attached were sold separately in nine lots, and the judgment-debtor prayed to have the sale of one of the properties set aside under s 310A, Civil Procedure Code, by tendering the balance (together with the percentage required under the law) due under the decree, after deducting the amounts bid by the decree-holder for some of the properties and the amounts deposited by the other purchasers,—*Held* that s. 310A did not apply to this case, and that there was no deposit within the terms of that section KRIPA NATH PAL *v.* RAM LAKSHMI DASYA [1 C. W. N., 703

359 ———— Application to set aside ...

and zur-i-peshgi money, Attachment of—Bengal Tenancy Act (VIII of 1885), ss 162, 163—Sale of the defaulting tenure—Sale of the zur-i-peshgi claim whether valid.—*A* advanced some money to *B* upon a zur-i-peshgi of certain property and sub let the same property to *B*, on a certain rent reserved, subsequently *A* brought a suit for the rent so reserved, and a decree upon a compromise entered into between the parties was awarded in favour of *A* for realization of

application for setting aside the sale was made by the judgment-debtor *B* to the Court which sold the property, upon the ground that the sale proceedings were vitiated by fraud on the part of the decree-holder in the conduct of the sale The Subordinate Judge found that there was fraud, and set aside the sale as bad in law On appeal this order was confirmed by the District Judge, who, however, expressed no opinion on the question of fraud On second appeal it was contended that the sale could not be set aside under s 312 unless it was found that there was fraud *Held* that, if the application of the judgment debtor be regarded as one under s 311 of the Code of Civil Procedure, it would be necessary to come to some conclusion or other upon the question of fraud, and unless it is found that the fraud came to

SALE IN EXECUTION OF DECREE —*continued*

17. SETTING ASIDE SALE—*continued.*

Bengal Tenancy Act, nothing but the tenure in [illegible] the sale of the [illegible] ad against the [illegible] LUCHMIPAT *v.* [illegible] C. W. N., 333

360. ———— Ground for setting aside sale—*Civil Procedure Code, 1859, ss. 256, 257—Suit to cancel order setting aside sale—Act XXIII of 1861, s. 11*—A Munsif having cancelled an auction-sale of landed property on the sole objection of the judgment-debtor that the property realized a low price, and the Judge having dismissed the auction-purchaser's appeal from the said order on the ground that the Munsif had no authority to cancel the sale under the terms of s 257 of Act VIII of 1859 without some irregularity in conducting or publishing the sale being proved, and that the said order must therefore be taken to have been passed under s. 11, Act XXIII of 1861, which admits of no appeal by the auction-purchaser, who was no party to the execution-proceedings,—*Held* that such order passed by the Munsif was not a proceeding under s. 11 of Act XXIII of 1861, but an order passed *ultra vires* under s. 257 of Act VIII of 1859, and that a suit would lie for its cancelment—the finality of an order under ss. 256 and 257 of Act VIII of 1859 depending on its compliance with the terms of those sections. SUKHAI *v.* DARYAI . I. L. R., 1 All., 374

361. ———— *Civil Procedure Code, 1882, ss 311, 312, 313, 644—Act XII of 1879, sch IV, form 149—Suit to set aside sale*—Under Act XII of 1879, form 149 of sch. IV of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days,—*Held* that the sale was not rendered inoperative, and that its effect was not postponed by reason of the provision in form No. 149. HAJI *v.* ATHARAMAN MUSSA *v.* ATHARAMAN . I. L. R., 7 Mad., 512

362. ———— *Order confirming sale after order setting it aside*—A sale in execution of a decree was set aside by a subsequent decree of 9th March 1861, but was afterwards allowed to stand by an order of 7th May 1862. As no suit was brought to set aside the latter order, it was held to be a final judicial proceeding, and the sale declared to be good and valid. MUNNOO LALL *v.* CHOONEE SHAHOO . . . . . . 7 W. R., 116

363. ———— *Objection for irregularity disallowed—Sale set aside on other grounds*—On application by the judgment-debtor to [illegible] But the District Judge on appeal set aside the sale on a ground on which he had no authority to interfere. On petition to the High Court by the purchaser of the house,—*Held* that the order of the Judge must be set aside as illegal, and the original order, confirming the sale, allowed to stand. KOSHTI *v.* NARAYAN DHULAPPA . . 3 Bom., A. C., 110

364. ———— *Security by manager of lunatic—Second attachment and sale before security given—Attachment without sale*, [illegible] sale before he would allow actual possession to be given to her. The sale was confirmed, but several [illegible] ordered for the protection of the lunatic against [illegible]

[10 B. L. R., 214 17 W. R., 289: 14 Moore's I. A., 529

365. ———— *Second sale before confirmation—Separate suit—Effect of sale before confirmation*—The plaintiff and the defendants C and D were the co-owners of a portion of a [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

took place long after the second sale had been con- [illegible]

[illegible]

Mullick v. *Luchmeeput Singh Doogur, 14 Moore's I. A.,* 529. *10 B. L. R., 214,* cited PRANGOUR MAZOOMDAR v. HIMANTA KUMARI DEBYA [I. L. R., 12 Calc., 597

366. ——————— *Civil Procedure Code, ss. 311, 312—Objection to sale—Legal disability—Limitation Act (XV of 1877), s 7—Order confirming sale before time for filing objec-* [illegible]

[illegible]

precluded from entertaining objections after such [illegible]

[illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

posal of the appellant's objections. *Phoolbas Koonwur* v. *Jogeshur Sahoy, I. L. R., 1 Calc., 226,* referred to. BALDEO SINGH v KISHAN LAL [I. L. R., 9 All, 411.

(b) IRREGULARITY.

367. ——— **Objections to sale for irregularity**—*Duty of Court—Procedure.*—Where a judgment-debtor objects to the sale of attached property, it is the duty of the Court executing the decree to try the validity of the objections. GUNESH LALL TEWAREE v. BINDOO BASHINEE [24 W. R., 85

368. ——— **Application to set aside sale**—*Civil Procedure Code, 1859, s 256—Procedure.*—The issue which arises when a petition is preferred under Act VIII of 1859, s 256, is a judicial proceeding and ought to be carried out with regularity, the Court fixing a day for the hearing of the matter of the petition and giving reasonable notice to all parties,—*i.e.*, such as would afford to each party fair and reasonable opportunity of bringing the necessary evidence on or before that day. IN THE MATTER OF THE PETITION OF BROJO MOHUN THAKOOR. BROJO MOHUN THAKOOR v AMEENOODDEEN [20 W. R., 424

369. ——————— *Discretion of Judge—Presentation of application* —A Judge has discretion to receive an application to set aside a sale in execution of a decree when made to him after the lapse of thirty days, but before the confirmation of the sale. POULSON v DUNN . 18 W. R., 11

IN THE MATTER OF UMIRTO LALL BOSE [18 W. R., 11 note

Contra, RAJ COOMAR SINGH *alias* NANHOO LALL v LALLJEE SAHOO . . 18 W. R., 333

where the Court, however, held that the applicant was bound to show some valid excuse for not making the application in proper time

As to what the term "applicant" included, there were under Act VIII of 1859 diverse rulings, some [illegible]

and others that judgment-debtors and not third parties were meant. LUCHMEEPUT SINGH DOOGUR v MOOKTAKASHEE DEBIA 9 W. R., 388

S. C upheld on review. MOOKTAKESHEE DEBIA v LUCHMEEPUT SINGH DOOGUR . 10 W. R., 137

JOGE NARAIN SINGH v. BHUGBANO [2 W. R., Mis., 13

PURSHOTTAM VITHAL v PURSHOTTAM ISWAR [I. L. R, 8 Bom., 532

LUCHMEEPUT SINGH v ADOITO CHURN MULLICK . . . . . 24 W. R., 452

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Haradhone Shamunto v. Goluck Chunder Shamunto . 25 W. R., 79

Maina Koer v. Luchmun Bhugout [1 C. L. R., 250

Man Kuar v. Tara Singh [I. L. R., 7 All., 583

370.

Kuar v. Tara Singh . I. L. R., 7 All., 583

371. ——— *Code of Civil Procedure (Act X of 1877), s. 311.*—The words "any person whose immoveable property has been sold" in s. 311 of the Code of Civil Procedure do not include a person who has

[I. L. R., 8 Calc., 367

S. C. Bhagabati Charan Bhuttacharjee v. Kali Kumar Chuttah . 10 C. L. R., 441

372. ——— *Civil Procedure Code 1885, s. 311—*

373. ——— *Civil Procedure Code, ss. 311, 295—*

Athappa Chetti v. Rama Krishna Nayakhar [I. L. R., 21 Mad., 51

374. ——— *Civil Procedure Code, s. 311—Objection to sale by wife of judgment-debtor.*—A person who claims to be a purchaser from a judgment-debtor prior to an attachment is not

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

irregularity must be one who has sustained substantial injury arising therefrom, as laid down in *Joge Narain Singh v. Bhugbano, 2 W. R., Mis., 13,* and explained by *Krishnarav Venkatesh v. Vasudev Anant, 11 Bom., H. C., 15,* approved. Asmutunissa Begum v. Ashruff Ali

[I. L. R., 15 Calc., 488

375. ——— *Person claiming by title paramount to, or independently of, judgment-debtor—Civil Procedure Code, s. 311.*—*Held* by Mahmood, J., that a person claiming by title paramount to, or independent of, the judgment-debtor is

376. ——— *Civil Procedure Code, s. 311—Application to set aside execution sale—Remedy of one claiming adversely to the judgment debtor.*—A person alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execution of the decree. *Held* that the proper remedy of the applicant was a regular suit, and not a proceeding under Civil Procedure Code, s. 311. Subbarayadu v. Pedda Subbarazu

[I. L. R., 16 Mad., 476

377. ——— *Civil Procedure Code, ss. 311, 295—"Decree-holder."*—The term "decree-holder" in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution proceedings, but may include a decree-holder who is entitled to come in and share in the proceeds under s. 295 of the Code. *Lakshmi v. Kuttunni, I. L. R., 10 Mad., 57,* approved. Ajudhia Prasad v. Nand Lal Singh

[I. L. R., 15 All., 318

378. ——— *Civil Procedure Code, s. 311—Application to set aside sale in execution—Decree-holder—Parties.*—The decree-holder is a necessary party to an application

Karamat Khan v. Mir Ali Ahmad, Weekly Notes (All.), 1891, p. 121, referred to. Ali Gauhar Khan v. Bansidhar . . I. L. R., 15 All., 407

379. ——— *Civil Procedure Code (Act XIV of 1882), ss. 311, 312, 313, 622—Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser—Superintendence of High Court.*—A purchaser at a Court-sale, alleging that he had been

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

the sale, sum- the exer-cising its authority under s. of the Code of Civil Procedure, that the purchaser, though he would

particular cases to which they referred), and that s. 312, in the absence of cases falling within these sections, required that the sale should be confirmed BIRJ MOHUN THAKUR *v.* RAI UMA NATH CHOWDHRY . . . . I. L. R., 20 Calc., 8 [L. R., 19 I. A., 154

380. ——————— *Civil Procedure Code, s. 311—Objection to sale by person claiming to be the real owner—Benamidar, Decree against*—Per PETHERAM, C.J., and GHOSE, J. (BEVERLEY, J, dissenting), where immoveable property has been sold in execution of a decree against the ostensible owner as his property, a person claiming to be the beneficial owner is entitled to come in under s. 311 of the Code of Civil Procedure and object to the sale *Asmutunnissa Begum* v. *Ashruff Ali, I. L. R., 15 Calc., 488,* followed. ABDUL GANI *v.* DUNNE . I. L. R., 20 Calc., 418

381. ——————— *Civil Procedure Code, ss. 295, 311—Rateable distribution of sale-proceeds—"Decree-holder."*—A person who is not entitled to come in under s 295 of the Civil Procedure Code and share in the distribution of the sale-proceeds is not included within the term "decree-holder" in s. 311, nor is he entitled to apply under that section to set aside the sale. *Debokı Nundon Sen* v. *Hart, I. L. R., 12 Calc., 294,* and *Lakshmi* v. *Kuttunni, I. L. R., 10 Mad., 57,* referred to. CHATTRAPAT SINGH *v.* JADUKUL PROSAD MUKERJEE [I. L. R., 20 Calc., 673

382 ——————— *Civil Procedure Code (1882), s. 311—Application to set aside a sale of a tenure by a purchaser from the judgment-debtor prior to attachment.*—A person who claims to be a purchaser of a tenure prior to attachment from a judgment debtor whose interest in the tenure has been sold in execution of a decree for its own arrears of rent is entitled to apply, under s. 311

[I. L. R., 22 Calc., 802

383. ——————— *Civil Procedure Code, s. 311—"Decree-holder"—Attaching creditor of application to set aside sale.*—An attaching creditor is not a "person whose immoveable property is sold" within the meaning of s. 311, nor does he come within the words "the decree-holder" which appear at the commencement of that section. The term "decree-holder" in s. 311 means the decree-holder who brings the property to sale and not any decree-holder. *Asmutunnissa Begum* v. *Ashruff Ali, I. L. R., 15 Calc., 488,* referred to *Lakshmi* v. *Kuttunni, I. L. R., 10 Mad., 57*, *Ajudhia Prasad* v. *Nand Lal Singh, I. L. R., 15 All., 318*, and *Sorabji Edalji* v *Gobind Ranji, I. L. R., 16 Bom., 91,* dissented from *Chatrapat Singh* v. *Jadukul Prosad Mukerjee, I. L. R., 20 Calc., 673*, *Clark* v. *Alexander, I. L. R., 21 Calc., 200*, and *Har Bhajal Das Marwari* v. *Ananda Ram Marwari, 2 C. W. N., 126,* distinguished MATUNGINI DASSI *v.* MONMOTHANATH BOSE . 4 C. W. N., 542

384. ——————— *Civil Procedure Code (1882, as amended by Act V of 1894), s. 310A—Judgment-debtor under decree on mortgage passed under Transfer of Property Act, s 88—Effect of former application by other judgment-debtor under s 311 of the Civil Procedure Code*—

section. ASHRUF ALI CHOWDHRY *v* NET LAL SAHU . . . . I. L. R., 23 Calc., 682

385. ——————— *Code of Civil Procedure (1882), ss. 310A and 311—Meaning of the words, "he shall not be entitled to make an application under this section" in the proviso of s. 310A—Civil Procedure Code Amendment Act*

application was made under s. 311 of the Code, the applicant was not entitled to have the benefit of the former section. RAJENDRA NATH HALDAR *v.* NILRATAN MITTER . I. L. R., 23 Calc., 958

386. ——————— *Civil Procedure Code (Act XIV of 1882), s. 310A—Right of a mortgagee to the benefit of s. 310A.*—A mortgagee, bei pre of cedure Code, s. 310A. The purchaser was the decree-holder. The application having been refused by the Courts of first instance and first appeal, the applicant appealed to the High Court *Held* that the appeal was maintainable, and the appellant

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

was entitled to the relief sought. SRINIVASA AYYANGAR *v.* AYYATHORAI PILLAI [I. L. R., 21 Mad., 416

387. ——— *Civil Procedure Code (Act XIV of 1882), s. 310A—Sale in execution of mortgage-decree—Application by mortgagor under s. 310A, Civil Procedure Code—Transfer of Property Act (IV of 1882), s. 104, Rules framed under—Civil Procedure Code Amendment Act (V of 1894).*—*Held* by the Full Bench S 310A of the Civil Procedure Code (Act XIV of 1882, as amended by Act V of 1894) does not apply to sales of mortgaged property under the Transfer of Property Act (IV of 1882). The rules framed by the High Court (Circular order No. 13,

the High Court under s 104 of the Transfer of Property Act making s. 310A of the Civil Procedure Code applicable to sales of mortgaged property under the said Act would not be *ultra vires* KEDAR NATH RAUT *v.* KALI CHURN RAM [I. L. R., 25 Calc., 703 2 C. W. N., 353

See DAKSHINA MOHUN ROY *v* BASUMATI DEBI [4 C. W N., 474

where this case is explained and where it was held that s. 104 of Transfer of Property Act is an enabling section and the rules made by the High Court (Circular order No. 13, dated 27th April 1892) under the provision of s. 104 do not limit the applicability of the Code of Civil Procedure as regards sales held in execution of mortgage decrees.

388. ——— *Civil Procedure Code (Act XIV of 1882), s. 310A—Right to apply under the section—Person who has contracted to purchase land*—A person who has contracted to purchase land, or an interest in land, does not by such contract become the owner in equity of such land or such interest (s. 54 of the Transfer of Property Act, IV of 1882). He has a personal right against his vendor or the assignee with notice of his vendor to

the sale under s 310A of the Civil Procedure Code MAHADEO CHINTAMAN WADEKAR *v.* VASUDEV J. KIRTIKAR I. L. R., 23 Bom., 181

389. ——— *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Execution-sale—"Person whose immoveable property has been sold"—Prior*

Civil Procedure Code to have the execution-sale set aside. RAMCHANDRA DHONDO *v.* RAKHMABAI [I. L. R., 23 Bom., 450

390. ——— *Civil Procedure Code, 1882, s. 310A—Right of benamidar to apply to set aside sale*—A benamidar of a person whose immoveable property is sold has a right to apply to have the sale set aside under s 310A of the Code of Civil Procedure. BASI PODDAR *v.* RAM KRISHNA PODDAR . . . . 1 C. W. N., 135

391. ——— *Civil Procedure Code (Act XIV of 1882), s. 310A—Application to set aside sale by purchaser from judgment-debtor after auction sale.*—A purchaser at a private sale from the judgment-debtor after sale in execution has no *locus standi* to make an application under s 310A of the Civil Procedure Code. HAZARI RAM *v.* BADRI RAM . . 1 C. W. N., 279

392. ——— *Civil Procedure Code (1882), s. 311—Application by person not party to decree*—Land having been sold in execution of decree, one claiming that it had been held by the judgment-debtor benami for him applied that the sale be cancelled under s 311. He was not a party to the decree, and on that ground his petition was dismissed. *Held* that the fact of the petitioner being a stranger to the decree did not preclude him from obtaining the relief sought under s 311 TIMMANA BANTA *v.* MAHABALA BHATTA [I. L. R., 19 Mad., 167

393. ——— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Plea to jurisdiction of Court to sell—Civil Procedure Code, s. 320*—*Held* that in

BEGAM *v.* AGHA ALI KHAN [I. L. R., 18 All., 141

394. ——— *Application to*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Husain, I. L. R., 21 Calc, 66 L. R, 20 I. A, 176, and *Shirin Begam* v. *Agha Ali Khan, I. L. R., 18 All., 141,* referred to. HARBANS LAL v. KUNDAN LAL . . . . I. L. R., 21 All., 140

395. ——— *Civil Procedure Code, s 311—Person whose property has been sold—Mortgagee—Transfer of Property Act (IV of* [illegible] tenure [illegible] s. 86 of [illegible] eclosure, [illegible] amount [illegible] lemption [illegible] time was subsequently extended on the application of the mortgagor to 30th April 1885. On the 6th April 1885, in execution of a decree for arrears of rent [illegible] for material irregularity. *Held* that, under s 86 of the Transfer of Property Act, the mortgagees had such an interest in the property as brought them within the words of s. 311, "person whose property has been sold," and entitled them to make the application. RAKHAL CHUNDER BOSE v. DWARKA NATH MISSER . . I. L. R., 13 Calc., 346

396. ——— Right to have sale set aside as against bonâ fide purchaser—*Question of right how to be determined.*—It cannot be laid down as a general proposition of law that under no circumstances can a sale in execution of a decree be set aside as against a *bonâ fide* purchaser for valuable consideration and without notice. In a suit [illegible]

S. C. ABDUL HYE v. NAWAB RAJ 9 W. R., 196

397. ——— Evidence of irregularity—*Objections to sale-proceedings.*—Where objec- [illegible]

[2 N. W., 142

398. ——— Finding as to irregularity—*Civil Procedure Code, 1859, s 256—Material injury.*—On an application to set aside a sale of immoveable [illegible] s 256, Act [illegible] any substa[illegible] it was held [illegible] finding that there has been an irregularity in publishing or conducting the sale. PARBUTTY v. GIRDAREE LAL . . 6 W. R., Mis., 125

399. ——— Objections to sale being made absolute—*Civil Procedure Code, 1859, ss 256, 257.*—Objections by the judgment-debtor to [illegible]

irregularity in publishing or conducting it. NIL KOMUL CHUCKERBUTTY v. SHAMA SOONDUREE [6 W. R., Mis., 46

VIRSINGAPPA BIN BASLINGAPPA v. SADASHIVAPPA APPA GOLKHANDI . 7 Bom., A. C., 74

400. — Ground for setting aside sale [illegible]

401. ——— *Civil Procedure Code (1882), ss. 311 and 221—Omission to transmit certificate to Court executing decree.*— [illegible]

402. ——— *Insanity of* [illegible]

AYYAR, J, that these facts only amounted to a material irregularity within s. 311, Civil Procedure Code, and that the plaintiff must prove substantial injury. NARAYANA KOTHAN v. KALIANASUNDARAM PILLAI . . . I. L. R., 19 Mad., 219

403. ——— *Omission to make attachment.*—It was doubted at one time whether a sale could be set aside by reason of an omission to attach the property. JOWHUROOL ZUMMA KHAN v. BANEE MADHAB NUNDUN 11 W. R., 228

404. ——— *Civil Procedure Code, 1859, s. 201—Sale without attachment—Irregularity.*—No sale in execution of a decree can [illegible]

405. ——— *Sale of property without attachment—Decree for money—Invalidity*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

of sale — Civil Procedure Code, Ch. XIX and s 254.—A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void MAHADEO DUBEY *v.* BHOLA NATH DICHIT

[I. L. R., 5 All., 86

406. ——————— *Effect on sale when confirmed, of the absence of attachment* —After a sale has been confirmed and a sale-certificate granted to the purchaser, the sale is not to be considered as a nullity merely by reason of the absence of any attachment. *Sharoda Moyee Burmonee v. Wooma Moyee Burmonee, 8 W R , 9,* followed. *Mahadeo Dubey* v. *Bhola Nath Dichit, I L. R., 5 All , 86,* dissented from. KISHORY MOHUN ROY *v.* MAHAMED MUJAFFAR HOSSEIN . I. L. R., 18 Calc., 188

407. ——————— *Omission to attach property second time—Sale without attachment.*—Property already under attachment at the suit of the creditor to enforce part of a debt accrued due in a mortgage transaction at an earlier period was sold in satisfaction of his decree for instalments subsequently due by the same debtor A second attachment would have been a mere formality, and was not material to the validity of the sale DOSIBAI *v* ISHVARDAS JAGJIVANDAS

[I. L R , 15 Bom., 222
L. R , 18 I. A., 22

408. ——————— *Attachment before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver —Civil Procedure Code, ss 311, 483.*—The plaintiff instituted a suit against defendants for recovery of money, and previous to judgment, that is, on the 8th of January 1885, applied for, and on the 11th obtained, an order for attachment of several houses and premises belonging to defendant, and such attachment was made The suit was dismissed, but eventually on appeal it was decreed, but the attachment was never withdrawn. Plaintiff then applied for

debtor then objected to the confirmation of the sale, urging that the property sold was never attached in execution of the decree, and the attachment previous to judgment was infructuous, because afterwards the claim was dismissed by the Court of first in-

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Held, following *Mahadeo Dubey v. Bhola Nath Dichit, I. L. R , 5 All., 86,* that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void, and may be set aside without any inquiry as to substantial injury being sustained by the judgment-debtor for want of a valid attachment; and that an attachment before judgment, like a temporary injunction, becomes *functus officio,* as soon as the suit terminates. Further, that the phrase "a material irregularity in publishing or conducting" in the first paragraph of s 311 of the Code of Civil Procedure should be liberally construed, and that absence of attachment of property at the time of sale thereof is "a material irregularity," attachment being the first step which a Court in executing a simple money-decree has to take to assert its authority to bring property to compulsory sale. RAM CHAND *v.* PITAM MAL

[I. L. R., 10 All., 506

409. ——————— *Omission to attach property – Decree on mortgage.*—The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage-debt does not affect the validity of a sale of the mortgaged property in execution of such decree TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY

[I L R., 21 Calc., 639

MUNIAPPA NAIK *v.* SUBRAMANIA AYYAN

[I. L. R., 18 Mad., 437

410. ——————— *Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss. 268 and 274—Irregularity in attachment.*—*Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment subsequent to which such sale was held might have been made

SHEO CHARAN LAL *v.* SHEO SEWAK LAL

[I. L. R., 18 All , 469

411. ——————— *Sale without*

to vitiate the sale. *Ram Chand* v. *Pitam Mal,*

SALE IN EXECUTION OF DECREE —*continued*

17. SETTING ASIDE SALE—*continued.*

Dichit, I. L. R., 5 All, 86, distinguished. SHEODHYAN *v.* BHOLANATH . . I. L. R., 21 All., 311

412. ——— *Irregular attachment—Civil Procedure Code, 1859, s. 285.*—The attachment of immoveable property by a Court other than that which passed the decree, before the decree had been sent to it for execution, vitiates the

MOOKTA KESHEE DEBEE *v.* KUNUCK MONEE DEBEE . . . . 7 W. R., 267

See MOOKTAKESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . . . . 10 W. R., 137

Upholding on review LUCHMEEPUT SINGH *v.* MOOKTAKASHEE DEBIA . . 9 W. R., 388

413. ——— *Process issued*

required by law, with an interval of thirty days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. HURO SOONDUREE DEBIA *v.* BROJO GOBIND SHAHA [4 W. R., Mis., 12

414. ——— *Irregularity in attachment—Civil Procedure Code, 1859, ss. 235, 259, 256.*—On an application made to a Principal Sudder Ameen for execution of a decree against a

further procedure, under s. 285 and the sections following, or further attachment, the property was put for sale and purchased, no certificate under s. 259 being given to purchaser. *Held* that the sale was illegal, and that there had been no valid transfer of right, title, and interest in the property LUCHMEEPUT SINGH DOOGUR *v.* MOOKTAKASHEE DEBIA [9 W. R., 388

S. C. upheld on review MOOKTAKESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . 10 W. R. 137

415. ——— *Irregularity in attachment—Attachment of debt—Civil Procedure*

served with the order applied, under s. 278, to have the attachment removed *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that,

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287 of the Code, to ascertain all that the Court considers it material for

itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale. HARILAL *v.* ABHESING MERU . I. L. R., 4 Bom., 323

416. ——— *Irregularity in issue of notification of sale and attachment—Misconduct of decree-holder.*—Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings, on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non-service or of insufficient service. The misconduct of a decree-holder

RETHBUNJUN SINGH *v.* MITTURJEET SINGH [4 W. R., Mis., 9

417. ——— *Irregularity in service of prohibitory order—Act VIII of 1859, ss. 236 and 243—Purchase of property by decree-holder—Practice of English Courts*—In execution

legal and regular *Held* also that the Court executing the defendant's decree ought not to have sold the plaintiff's decree, but should have, under s. 243, appointed a manager to enforce plaintiff's decree That a decree-holder ought not to be allowed to bid and purchase at a sale in execution of his decree, without an order of Court previously obtained upon notice to the judgment-debtor Practice of English Courts regarding sale in execution of decrees discussed BANDHU ROY *v.* HANUMAN SINGH [3 B. L. R., A. C., 320: 14 W. R., 406 note

418. ——— *Irregularity in applying for execution of decree—Act VIII of 1859, s. 257*—G and M obtained a money-decree against K in the Court of the Principal Sudder Ameen on the 12th December 1864 This decree was reversed by the District Judge but on the 5th March 1866 the Sudder Court set aside the Judge's decree

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

of sale — Civil Procedure Code, Ch. XIX and s 254.—A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void. MAHADEO DUBEY v BHOLA NATH DICHIT

[I. L. R., 5 All., 86

406. ———— *Effect on sale when confirmed, of the absence of attachment* —After a sale has been confirmed and a sale-certificate granted to the purchaser, the sale is not to be considered as a nullity merely by reason of the absence of any attachment. *Sharoda Moyee Burmonee v. Wooma Moyee Burmonee, 8 W R, 9,* followed. *Mahadeo Dubey v. Bhola Nath Dichit, I L. R., 5 All., 86,* dissented from. KISHORY MOHUN ROY v. MAHAMED MUJAFFAR HOSSEIN . I. L. R., 18 Calc., 188

407. ———— *Omission to attach property second time—Sale without attachment* —Property already under attachment at the suit of the creditor to enforce part of a debt accrued due in a mortgage transaction at an earlier period was sold in satisfaction of his decree for instalments subsequently due by the same debtor A second attachment would have been a mere formality, and was not material to the validity of the sale DOSIBAI v. ISHVARDAS JAGJIVANDAS

[I. L. R., 15 Bom, 222
L. R, 18 I. A., 22

408 ———— *Attachment before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver—Civil Procedure Code, ss 311, 483.*—The plaintiff instituted a suit against defendants for recovery of money, and previous to judgment, that is, on the 8th of January 1885, applied for, and on the 11th obtained, an order for attachment of several houses

debtor then objected to the confirmation of the sale, urging that the property sold was never attached in execution of the decree, and the attachment previous to judgment was infructuous, because afterwards the claim was dismissed by the Court of first in-

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Held, following *Mahadeo Dubey v Bhola Nath Dichit, I. L. R, 5 All., 86,* that a regularly perfected attachment is an essential preliminary to sales in execution of

judgment, like a temporary injunction, becomes

property at the time of sale thereof is "a material

409. ———— *Omission to attach property—Decree on mortgage.*—The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage-debt does not affect the validity of a sale of the mortgaged property in execution of such decree. TINCOURI DEBYA v. SHIB CHANDRA PAL CHOWDHURY

[I. L. R., 21 Calc., 639

MUNIAPPA NAIK v. SUBRAMANIA AYYAN

[I. L. R, 18 Mad, 437

410. ———— *Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss. 268 and 274—Irregularity in attachment.*—*Held* that a sale of the mortgagee's

to which such sale was held might have been made

SHEO CHARAN LAL v. SHEO SEWAK LAL

[I. L. R., 18 All., 469

411. ———— *Sale without*

SALE IN EXECUTION OF DECREE —*continued*

17. SETTING ASIDE SALE—*continued.*

Dichit, I. L. R., 5 All., 86, distinguished. SHEODHYAN v. BHOLANATH . . I. L. R., 21 All., 311

412. ——— *Irregular attachment—Civil Procedure Code, 1859, s. 285.—*

MOOKTA KESHEE DEBEE v. KUNUCK MONEE DEBEE . . . 7 W. R., 267

See MOOKTAKESHEE DEBIA v. LUCHMEEPUT SINGH DOOGUR . . . 10 W. R., 137

Upholding on review LUCHMEEPUT SINGH v. MOOKTAKASHEE DEBIA . . . 9 W. R., 388

413 ——— *Process issued*

between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. HURO SOONDUREE DEBIA v. BROJO GOBIND SHAHA [4 W. R., Mis., 12

414. ——— *Irregularity in attachment—Civil Procedure Code, 1859, ss 235, 259, 256*—On an application made to a Principal Sudder Ameen for execution of a decree against a

being given to purchaser. *Held* that the sale was illegal, and that there had been no valid transfer of right, title, and interest in the property LUCHMEEPUT SINGH DOOGUR v MOOKTAKASHEE DEBIA [9 W. R., 388

S. C upheld on review MOOKTAKESHEE DEBIA v LUCHMEEPUT SINGH DOOGUR . 10 W. R. 137

415. ——— *Irregularity in attachment—Attachment of debt—Civil Procedure*

section having no application to the case; but that,

SALE IN EXECUTION OF DECREE —*continued*

17 SETTING ASIDE SALE—*continued.*

before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s 287 of the Code, to ascertain all that the Court considers it material for

should abstain from proceeding to sale HARILAL v. ABHESING MERU I. L. R., 4 Bom., 323

416. ——— *Irregularity in issue of notification of sale and attachment—Misconduct of decree-holder.*—Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non-service or of insufficient service. The misconduct of a decree-holder

RETHBUNJUN SINGH v. MITTURJEET SINGH [4 W. R., Mis., 9

417. ——— *Irregularity in service of prohibitory order—Act VIII of 1859, ss. 236 and 243—Purchase of property by decree-holder—Practice of English Courts.*—In execution of a decree, the defendant caused a decree of the plaintiff awarding him R925 to be attached, and, under s 236, Act VIII of 1859, caused the prohibitory order to be fixed in a conspicuous part of the

without an order of Court previously obtained upon notice to the judgment-debtor. Practice of English Courts regarding sale in execution of decrees discussed BANDHU ROY v HANUMAN SINGH [3 B. L. R, A. C., 320: 14 W. R., 408 note

418 ——— *Irregularity in applying for execution of decree—Act VIII of 1859, s 257.*—G and M obtained a money-decree against K in the Court of the Principal Sudder Ameen on the 12th December 1864 This decree was reversed by the District Judge, but on the 5th March 1866 the Sudder Court set aside the Judge's decree

SALE IN EXECUTION OF DECREE —*continued.*

17 SETTING ASIDE SALE—*continued.*

and ordered a new trial. On the 5th May 1866 the District Judge affirmed the decree of the Court of first instance. On the 3rd December 1866 the High

419. ———————— *Irregularity in attachment—Confirmation of sale—Objection that property is not liable to attachment—Civil Procedure Code, 1882, ss 278, 311, 312.*—*Held* that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become

Code, and was consequently no ground for setting aside the sale under that section, especially as it was

420. ———————— *Sale of pro-*

ties A sale therefore is not liable to be set aside because the property sold was other than that hypothecated in the bond. LALJEE *v.* SADIT HOSSEIN

[4 N. W., 99

421. ———————— *Sale of property of third person—Right of suit—Civil Procedure Code, 1859, s. 252.*—A sale in execution of decree transfers to the purchaser nothing more than the rights and interests of the judgment-debtor at the time of attachment and sale; and s. 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert his claim by suit. The sale of moveable property, *belonging to a third party, in execution of a decree,* was not a mere irregularity within the meaning of s. 252, and the owner of the property so sold was entitled to sue for its restoration, or for damages. SHAM SUNDER DASS *v.* RAHEEM BUKSH

[6 N. W., 252

MOHANUND HOLDAR *v.* AKIAL MEHALDAR

[9 W. R., 118

422. ———————— *Sale of portion of tenure under decree for rent—Sale of other portion under mortgage-decree.*—Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in exe-

no lien on the tenure; and that consequently the mortgagee being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside. MOHENDRO COOMAR DUTT *v.* HEERA MOHUN COONDOO ISHANESWARY DASEE *v.* GOPAL DAS DUTT

[I. L. R., 7 Calc., 723

423. ———————— *Sale of whole*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Confirmed on review, MORGAN *v.* ABDOOL HYE [23 W. R., 393

424. ——————— *Material irre-*

any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale. *Olpherts* v. *Mahabir Pershad, L. R, 10 I. A., 25,* referred to, RAMCHHAIBAR MISR *v.* BECHU BHAGAT [I. L. R., 7 All., 641

425. ——————— *Decree for sale*

decree on a mortgage-bond, for the sale of the mortgaged property and for the costs of the suit, amounting to R1,000, certain houses were attached on the 30th September 1881, which were not part of the

and sale under the decree. In the meantime, on the 15th June 1882, the houses had been put up for sale and purchased for R500, and the sale had been confirmed on the 10th August 1882 The judgment-debtors brought a suit against the purchaser to set aside the sale, on the ground that the houses were not saleable under the decree. *Held* that the decree, in

the principal and interest decreed. *Per* MAHMOOD, *J.*, that the suit was maintainable, and was not barred by any plea *in limine* *Abdul Hye* v *Nawab Raj, B. L. R. Sup Vol., 911,* referred to Also *per* MAHMOOD, *J.*, that inasmuch as the adjudication of

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Court was not then called upon to decide anything in relation to the nature of the decree as to costs, the order then passed could not be used against the purchaser Also *per* MAHMOOD, *J.*, that it was doubtful whether, the attachment having been made for

426. ——————— *Omission to give due notice of sale—Material injury.*—Where, in an execution sale, there had been some irregularity

must be set aside JOYNARAIN GIRI *v* GOLUCK CHUNDER MITTER . 25 W. R., 183

427. ——————— *Omission to give notice of execution—Civil Procedure Code, 1877, s. 248*—An omission to give notice to the party against whom execution is proceeding, as provided by s. 248 of the Civil Procedure Code, invalidates a sale in execution of the decree IN THE MATTER OF THE PETITION OF RAMESSURI DASSEE. RAMESSURI DASSEE *v* DOORGADAS CHATTERJEE [I. L. R, 6 Calc., 103: 7 C. L. R., 85

Contra, MUPASA *v* MAHOMED AKBAR GAZEE [2 W. R., 74

428 ——————— *Omission to give*

sale which subsequently takes place in execution of the decree and the validity of the entire execution proceedings. *Ramessuri Dassee* v *Doorgadass Chatterjee, I. L R, 6 Calc, 103,* followed. *Held* therefore where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quære*—

SALE IN EXECUTION OF DECREE
—*continued.*

17 SETTING ASIDE SALE—*continued.*

and ordered a new trial. On the 5th May 1866 the

on the 7th November 1870 they renewed these proceedings, in each instance referring to the decree dated the 5th May 1866, even after it was set aside, and the decree dated the 14th January 1867 passed. On the last application a sale of certain immoveable property belonging to *K* was ordered and took place on the 15th February 1871 *K* objected to the con-

OLDFIELD, *J.*—That with reference to s 257, Act VIII of 1859, the suit was not maintainable GHAZI *v.* KADIR BAKSH . I. L. R., 1 All., 212

419. ——————— *Irregularity in*

and sold in execution of a decree for the payment of money for the performance of which he had become

Code, and was consequently no ground for setting aside the sale under that section, especially as it was

LAL . . . I. L. R., 7 All., 365

420. ——————— *Sale of property other than that hypothecated.*—A decree-holder is not precluded from taking any of his judgment-debtor's property in execution of his decree

ular proper-
be set aside
that hypo-
HOSSEIN
[4 N. W., 99

421. ——————— *Sale of property of third person—Right of suit—Civil Procedure Code, 1859, s. 252*—A sale in execution of decree transfers to the purchaser nothing more than the rights and interests of the judgment-debtor at the time of attachment and sale; and s. 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert his claim by suit. The sale of moveable property, belonging to a third party, in execution of a decree, was not a mere irregularity within the meaning of s. 252, and the owner of the property so sold was entitled to sue for its restoration, or for damages. SHAM SUNDER DASS *v.* RAHEEM BUKSH [6 N. W., 252

MOHANUND HOLDAR *v.* AKIAL MEHALDAR [9 W. R., 118

422. ——————— *Sale of portion of tenure under decree for rent—Sale of other portion under mortgage-decree.*—Where decrees for

423. ——————— *Sale of whole estate where a portion would suffice*—A Subordinate

[10 W. R., [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Confirmed on review, MORGAN *v.* ABDOOL HYE [23 W. R., 393

424. ———————— *Material irre-*

perty which was the subject of sale was not legally saleable, is not a matter which can be entertained

bir Pershad, L. R., 10 I. A., 25, referred to. RAMCHHAIBAR MISR *v.* BECHU BHAGAT [I. L. R., 7 All., 641

425. ———————— *Decree for sale of mortgaged property and for costs—Attachment and sale of other property for whole amount of decree—Suit to set aside execution sale—Civil Procedure Code, 1882, ss. 311, 312—Finality of order in execution proceedings.*—In execution of a

and sale under the decree. In the meantime, on the 15th June 1882, the houses had been put up for sale and purchased for R500, and the sale had been confirmed on the 16th August 1882. The judgment-debtors brought a suit against the purchaser to set aside the sale, on the ground that the houses were not saleable under the decree. *Held* that the decree, in regard to costs, was a decree made personal against

the 6th September 1882 was one between the judgment-debtors on the one hand and the decree-holder on the other, and subsequent not only to the sale, but to the confirmation of the sale, and inasmuch as the

ful whether, the attachment having been made for the whole amount of the decree and not for costs, and

426. ———————— *Omission to give due notice of sale—Material injury.*—Where, in an execution sale, there had been some irregularity

427. ———————— *Omission to give notice of execution—Civil Procedure Code, 1877, s. 248.*—An omission to give notice to the party against whom execution is proceeding, as provided by s. 248 of the Civil Procedure Code, invalidates a sale in execution of the decree. IN THE MATTER OF THE PETITION OF RAMESSURI DASSEE. RAMESSURI DASSEE *v.* DOORGADAS CHATTERJEE [I. L. R., 6 Calc., 103: 7 C. L. R., 85

Contra, MUTASA *v.* MAHOMED AKBAR GAZEE [2 W. R., 74

428. ———————— *Omission to give notice of application for execution.*—The omission to give the notice required by s. 248 of Act X of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree and the validity of the entire execution proceedings. *Ramessuri Dassee v. Doorgadass Chatterjee, I. L. R., 6 Calc., 103,* followed. *Held* therefore where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quære*—

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of that Act. IMAM-UN-NISSA BIBI *v.* LIAKAT HUSAIN . I. L. R., 3 All., 424

429.—— *Omission to re-issue process after proceedings have been struck off.* —After the striking off of an execution case, the omission to re-issue the processes required by law on the admission of a third party as decree-holder is not a material irregularity in the case. BISHEN DYAL SINGH *v.* KHUDEEMUN . W. R., 1864, 359

430.—— *Irregularity in notice of sale—Death of decree holder* —The issue of a notice of sale after the death of the original decree-holder, and before any person had applied to be registered as the substituted decree-holder, is not an irregularity which would warrant the setting aside of a sale under Act VIII of 1859, s. 256. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE [23 W. R., 481

431.—— *Irregularity in notice of sale—Proclamation of notice of liens* —The inam village of Chundunpuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Maligam or Chundunpuri, and be completed at Maligam. *Held* that the notice of sale was sufficiently certain. The practice of karkuns reading aloud notices of liens on property about to be sold by auction is objectionable, but, in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. GOVIND HARI VAIDKAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . 4 Bom., A. C., 164

432.—— *Irregularity in giving particulars of sale—Omission to mention numbers, etc., of notes—Sale and production of notes—Civil Procedure Code, 1859, ss. 201, 238, 248, 249.*—The omission in a sale proclamation to [illegible]

called for such particulars. The sale of such notes through a broker is permissive under s. 248, and not obligatory. The production of the notes in Court [illegible]

433.—— *Proclamation of sale not in prescribed form and without necessary particulars—Right of holders of other decrees to object—Civil Procedure Code, 1882, ss. 311, 314.*—A zamindar mortgaged his estate to a bank and the mortgagee obtained a decree in the High Court, in execution of which it was ordered that the zamindari should be sold village by village. Other persons held money decrees against the zamindar. One of them, in execution of his decree, had the zamindari put up for sale in one lot subject to the bank's mortgage, and with the leave of the Court purchased it himself. The other decree-holders applied to have the sale (which had not been confirmed) set aside on the ground of material irregularity in publishing the sale by which substantial injury was caused to them. The irregularities relied on were that the proclamation was not issued in the prescribed form, and did not state the extent of the property and the revenue assessed on it, or the amount of income derived from it, and no mention was made of the order of the High Court. *Held* that the sale should not be confirmed. ATHAPPA CHETTI *v.* RAMAKRISHNA NAYAKAN . [I. L. R., 21 Mad., 51

See LAKSHMI *v.* KUTTUNNI [I. L. R., 10 Mad., 57

434.—— *Sale of property otherwise than as advertised—Proof of damage—Advertisement of sale.*—When property is advertised to be sold in separate lots, and is after- [illegible]

such irregularity. Where therefore such damage had not been distinctly proved,—*Held* that the sale could not be set aside on the ground of the irregularity complained of. ROY NANDIPAT MAHATA *v.* URQUHART [4 B. L. R., A. C., 181 : 13 W. R., 209

reversing URQUHART *v.* NUNDEEPUT MAHAPUTTUR [12 W. R., 482

435.—— *Sale of property in separate lots instead of in one lot as advertised in proclamation of sale.*—A attached a decree [illegible]

436.—— *Omission to make proclamation of sale—Civil Procedure Code (Act X of 1877), s. 311—Irregularity in publication of intended sale* — An objection to the validity of a sale [illegible]

SALE IN EXECUTION OF DECREE —continued.

17. SETTING ASIDE SALE—continued.

the Court of first instance, which found that proclamation had been made,—*Held* that the objection was taken too late, although, if properly taken in the Court of first instance, it would have been good to the extent that not stating the amount of the revenue was an irregularity; substantial damage, resulting from it, remaining to be proved, as required by s 311 of Act X of 1877. *Held* also that inadequacy of price having been alleged as substantial damage, without having been proved to be the effect of the

by reason of such irregularity. MACNAGHTEN v. MAHABIR PERSHAD SINGH . I. L. R., 9 Calc., 656

S. C. OLPHERTS v MAHABIR PERSHAD SINGH [11 C. L. R., 494 L. R., 10 I. A., 25

reversing decision of High Court in MAHABIR PERSHAD SINGH v. OLPHERTS . 9 C. L. R., 134

437. ——— *Error in proclamation of sale as to incumbrance to which property was liable—Civil Procedure Code, 1882, ss. 311,* [illegible] in execution notified that the property ...s in fact one

438. ——— *Civil Procedure Code, 1882, ss. 287, 311—"Material irregularity" in publishing or conducting a sale—Omission to state amount of Government tax payable—Right of* [illegible]

...SAH MARACAYAR v. PALANIAPPA CHETTI [I. L. R., 23 Mad., 623

439. ——— *Error in over-statement of balance due on decree.*—A sale in execution of a decree is not invalidated by the fact that the [illegible]

SALE IN EXECUTION OF DECREE —continued.

17. SETTING ASIDE SALE—continued.

440. [illegible]

LODHUR ROY . . 2 W. R., 60

441. ——— *Omission to state amount of decree—Civil Procedure Code, 1882* [illegible]

...DOO. ISHANESWARY DASEE v GOPAL DAS DUTT [I. L. R., 7 Calc., 723

442. ——— *Omission of material part of notification of sale.*—The sale notification referred to [illegible]

BYKUNT NATH SANDYAL v. JUGGUT MOHUN SHAHA [24 W. R., 240

443 ——— *Irregularity in affixing notification of sale.*—The affixing, in the [illegible]

JADUB CHUNDER CHATTERJEE [6 W. R., Civ. Ref., 14

444. ——— *Irregularity in publication of sale.*—Where the sudder cutchery of the zamindar was beyond the jurisdiction of the Dis[illegible]

... 14 W. R., 44

445. ——— *Irregularity in publication of sale.*—The affixing of a notice of sale in a not very conspicuous part of the land, when the judgment-debtor resides in a different district, is not

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

sufficient to satisfy the requirements of justice. GOBIND CHUNDER MOOKERJEE v. RAM KOMUL CHATTERJEE . . . 25 W. R., 364

446. —————— *Irregularity in*

v. BEJOY KISHEN DASS . 8 Moore's I. A., 427

447. —————— *Irregularity in publication of sale—Execution-sale of groups of property under one decree—Irregularity and damage, their necessary relation—Code of Civil Procedure (Act XIV of 1882), ss. 289 and 311*—The words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separ-

448. —————— *Irregularity in publication of sale—Material irregularity—Civil Procedure Code (Act X of 1877), ss. 274, 289, 311*—Under ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. KALYTARA CHOWDHRAIN v. RAM COOMAR GOOPTA

[I. L. R., 7 Calc., 466: 9 C. L. R., 114

449.

that no affidavit as to search having been made

property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale. BANDY ALI v. MADHUB CHUNDER NAG

[I. L. R., 8 Calc., 932

450. —————— *Proclamation of sale—Civil Procedure Code (Act XIV of 1882),*

up such notice is an irregularity, the remedy for which can only be by an application under s. 311. NANA KUMAR ROY v. GOLAM CHUNDER DEY

[I. L. R., 18 Calc., 422

451. —————— *Irregularities in publication of sale—Evidence of such irregularities—Affixing proclamation of sale—Nazir's report—Civil Procedure Code (Act X of 1877), ss. 274, 290, 291, and 295—Sale to satisfy judgment-creditor who has not attached*—The proclamation of sale required by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property

suffered material injury by reason of such irregularities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence

MEGH LALL POOREE *v.* SHIB PERSHAD MADI [I. L. R., 7 Calc., 34

S. C. MEGH LAL POOREE *v.* MOHAMMED DUTT JHA [8 C. L. R., 369

452. ——— *Irregularity in publication of sale—Civil Procedure Code, ss. 274 and 289—Omission to beat drum—Material irregularity.*—Omission to have a drum beaten as required by ss. 289 and 274 of the Civil Procedure Code (Act XIV of 1882) *held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside. TRIMBAK RAVJI *v.* NANA . . I. L. R., 10 Bom., 504

453. ——— *Irregularity in publishing and conducting a sale—Waiver of irregularity by the judgment-debtor.*—Previous to

had attached and advertised the property for sale. That petition being refused, the sale took place; and

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

prior to the sale did not amount to

dence tendered by the judgment debtors on that point, and to find whether there had been such irregularities in publishing and conducting the sale as

454. ——— *Irregular publication of proclamation of sale*

after

the

days

where damage has resulted, the sale may be set aside. *Megh Lal Pooree v. Mohammed Dutt Jha, 8 C. L. R., 369 : I. L. R., 7 Calc., 34,* followed ABDUL NOSSIA *v.* DOOLAL DOSS . . 11 C. L. R., 303

Contra, RAMCHANDAR BAHADUR *v.* KAMTA PRASAD . . . I. L. R., 4 All., 300

455. ——— *Sale held too soon after proclamation—Sale of immoveable property in execution before thirty days from date of fixing up proclamation—Material irregularity in publishing or conducting sale—Civil Procedure*

456. ——— *Civil Procedure Code, s. 306—Delay in making deposit—Adjournment of sale—Absence of substantial injury.*—The

I. L. R., 11 Mad.,

457. ——— *Civil Procedure Code, 1882, ss. 290, 311—Material irregularity—Proof of substantial injury.*—The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immoveables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s. 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor. As to this, the

SALE IN EXECUTION OF DECREE
—continued.

17. SETTING ASIDE SALE—*continued.*

latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN
[I. L. R., 21 Calc, 66
L. R., 20 I. A., 176

458. ———— *Civil Procedure Code, s. 311—Material irregularity in publishing or conducting sale—Substantial injury—Notification omitting to state place of sale—Sale held after date advertised—Civil Procedure Code, ss. 287, 290.*—Where a proclamation of sale of immoveable property in execution of a decree omitted to state the place of sale, and where the sale took [illegible]

459. ———— *Civil Procedure Code, 1882, s. 290—Ground for setting aside sale.*—The infringement of the provisions of s 290 of the Civil Procedure Code is not a mere irregularity, but it vitiates the sale. *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289.* SADHUSARAN SINGH *v.* PANCHDEO LAL . I. L. R., 14 Calc., 1

460. ———— *Civil Procedure Code, ss 290, 311—Sale of immoveable property in execution of decree—Sale held before* [illegible]

SALE IN EXECUTION OF DECREE
—continued.

17. SETTING ASIDE SALE—*continued.*

by reason of such irregularity. *Olpherts* v. *Mahabir Pershad Singh, L. R., 10 I. A., 25; Megh Lall Pooree* v. *Sheb Pershad Madi, I. L. R., 7 Calc., 34; Kalytara Chowdhrain* v. *Ramcoomar Goopta, I. L. R., 7 Calc., 466; Tripura Sundari* v. *Durga Churn Pal, I. L. R., 11 Calc., 74; Bonomali Mozumdar* v. *Woomesh Chunder Bundopadhya, I. L. R., 7 Calc, 730; Bundy Ali* v. *Madhub Chunder Nag, I. L. R., 8 Calc., 932; Nothu* v *Harbhuj, Weekly Notes, All., 1885, p. 304; Jasoda* v. *Mathura Das, I. L. R., 9 All., 511,* and *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289,* referred to. GANGA PRASAD *v.* JAG LAL RAI
[I. L. R., 11 All., 333

461. ———— *Proclamation of sale—Sale before hour fixed—Civil Procedure Code (Act XIV of 1882), s. 287—Sale set aside as being no sale.*—A property, advertised for sale under s. 287 of the Code of Civil Procedure, was sold on the day fixed, but at an earlier hour than that stated in the proclamation. *Held* that there [illegible]

[I. L. R., 16 Calc., 794

462. ———— *Property sold before advertised time—Sale invalid.*—A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code. The time to be notified [illegible]

463. ———— *Property sold before advertised time.*—Where the fact of an execu- [illegible]

464. ———— *Property not sold at advertised time—Alteration in sale order.*—Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden

SALE IN EXECUTION OF DECREE
—*continued.*

17. SETTING ASIDE SALE—*continued.*

alteration of programme, without notice to in- [illegible] judg- [illegible] Code [illegible] sale.

[illegible] W. R., 281

465. ———— *Property not sold at advertised time—Purchase by decree-holder* [illegible]

very inadequate value, there is an irregularity which may cause material injury to the debtor. KISHEN PROSSUNNO MOJOMDAR *v.* NURDUMA DOSSEE
[17 W. R., 339

466. ———— *Alteration in particulars of property after advertising for sale—* [illegible]

omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was entitled to have a proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale. SHIB PROKASH SINGH *v.* SARDAR DOYAL SINGH . I. L. R., 3 Calc., 544 : 2 C. L. R., 260

467. ———— *Civil Procedure Code, ss. 247 and 289—Proclamation—Property* [illegible]

certainty of communication to persons on or interested in the one of what is publicly done on the other, [illegible]

468. ———— *Adjournment of sale—Notice—Discretion of person selling.*—An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion. GOVIND HARI VALEKHAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . . . 4 Bom., A. C., 164

SALE IN EXECUTION OF DECREE
—*continued.*

17. SETTING ASIDE SALE—*continued.*

469. ———— *Adjournment of sale—Notice.*—An execution-sale properly notified may be adjourned with the consent of the parties. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE . . . . . . 22 W. R., 481

470. ———— *Postponement of sale—Postponement without valid reason.*—*Held* that the judgment-debtor could not complain of the order of the Subordinate Judge postponing a sale in execution of decree from the 25th to the 26th, unless he could show that he had suffered substantially by the postponement. But the attention of the Court [illegible]

471. ———— *Postponement of sale—Civil Procedure Code, 1859, s. 243.*—When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ fide* made for it, the Court is not competent to postpone the sale, or to decline to conclude it, and order another auction, merely on the representation of the [illegible]

BHYROO PERSHAD . . 1 Agra, Mis., 11

472. ———— *Sale, postponement of, for benefit of debtor.*—Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when, no higher price being obtainable, it was concluded at the price bid on the first day. *Held* that there was no irregularity in the conduct of the sale which could prejudice the judgment-debtor. NUDDEA KISHORE DOSS *v.* BUNGSHEE MOHUN DOSS
[17 W. R., 210

473. ———— *Postponement of sale—Civil Procedure Code, 1859, s. 249—Ground for postponing sale.*—A Judge cannot order a Subordinate Judge to postpone a sale in a case pending before the Court of the latter officer. An application by a Collector under s. 249 of the Civil Pro- [illegible]

[illegible] W. R., [illegible]

474. ———— *Equitable grounds for setting aside sale—Sale contrary to order for postponement—Mistake.*—Where a sale in execution took place under an order obtained notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement, the petition so consented to

latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN

[I. L. R., 21 Calc., 66
L. R., 20 I. A., 176

458. ——— *Civil Procedure Code, s. 311—Material irregularity in publishing or conducting sale—Substantial injury—Notification omitting to state place of sale—Sale held after date advertised—Civil Procedure Code, ss. 287, 290.*—Where a proclamation of sale of immoveable property in execution of a decree omitted

and 290 of the Code was more than mere irregularity, that it must have caused substantial injury, and that the order confirming the sale must be set aside.

459. ——— *Civil Procedure Code, 1882, s. 290—Ground for setting aside*

460. ——— *Civil Procedure Code, ss 290, 311—Sale of immoveable property in execution of decree—Sale held before*

merely an irregularity within the meaning of s. 311

any substantial injury. *Held* by BRODHURST, J., *contra*, that infringement of the rule contained in

by reason of such irregularity. *Olpherts* v. *Mahabir Pershad Singh, L. R., 10 I. A., 25; Megh Lall Pooree* v. *Shib Pershad Madi, I. L. R., 7 Calc., 34; Kalytara Chowdhrain* v. *Ramcoomar Goopta, I. L. R., 7 Calc., 466; Tripura Sundari* v. *Durga Churn Pal, I. L. R., 11 Calc., 74; Bonomali Mozumdar* v. *Woomesh Chunder Bundopadhya, I. L. R., 7 Calc., 730; Bundy Ali* v. *Madhub Chunder Nag, I. L. R., 8 Calc., 932; Nothu* v. *Harbhuj, Weekly Notes, All., 1885, p. 304; Jasoda* v. *Mathura Das, I. L. R., 9 All., 511;* and *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289,* referred to. GANGA PRASAD *v.* JAG LAL RAI

[I. L. R., 11 All., 333

461. ——— *Proclamation of sale—Sale before hour fixed—Civil Procedure Code (Act XIV of 1882), s. 287—Sale set aside as being no sale.*—A property, advertised for sale under s. 287 of the Code of Civil Procedure, was sold on the day fixed, but at an earlier hour than that stated in the proclamation. *Held* that there had been no sale within the meaning of the Code, proclamation of the time and place of sale and the holding of the sale at such time and place being conditions precedent to the sale being a sale under the Code BASHARUTULLA *v.* UMA CHURN DUTT

[I. L. R., 16 Calc., 794

462. ——— *Property sold before advertised time—Sale invalid.*—A sale by

CHEDAMI LAL *v.* AMIR BEG I. L. R., 7 All., 676

463. ——— *Property sold*

464. ——— *Property not sold at advertised time—Alteration in sale order.*—Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued*

alteration of programme, without notice to intending bidders, or the express consent of the judgment-debtor, was an irregularity under s 256, Code of Civil Procedure, 1859, vitiating the sale. POKHRAJ SINGH *v.* GOSSAIN MUNRAJ POOREE

[12 W. R., 281

465. ——————— *Property not*

which ISHEN

[.. W. R., 339

466. ——————— *Alteration in particulars of property after advertising for sale—Material irregularity.*—The property of a judgment-debtor was proclaimed and advertised for sale in exe-

467. ——————— *Civil Procedure Code, ss. 247 and 289—Proclamation—Property broken up into lots—Separate proclamations*—

468. ——————— *Adjournment of*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

469. ——————— *Adjournment of sale*—

may be

GOBIND

JEE

and not postponing sales without good reason. ASMUTOONNISSA BIBEE *v.* KHUDEMOONNISSA BIBEE

[17 W. R., 278

471. ——————— *Postponement of sale—Civil Procedure Code, 1859, s. 243.*—When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ fide* made for it, the Court is not competent to postpone the sale, or to decline to conclude it, and order another

BHYROO PERSHAD . . 1 Agra, Mis., 11

472. ——————— *Sale, postponement of, for benefit of debtor.*—Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when, no higher price being obtainable, it was concluded

473. ——————— *Postponement of sale—Civil Procedure Code, 1859, s. 249—Ground for postponing sale.*—A Judge cannot order a Subordinate Judge to postpone a sale in a case pending before the Court of the latter officer. An application by a Collector under s. 249 of the Civil Pro-

474. ——————— *Equitable grounds for setting aside sale—Sale contrary to order for postponement—Mistake.*—Where a sale in execution took place under an order obtained notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement, the petition so consented to

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

having been by mistake afterwards presented to and

475. ———— *Postponement of sale—Sale after order postponing sale where order arrives too late to stay sale.*—When a Court

476. ———— *Order for postponement made before, but arriving at Collector's*

cation of sale. NONIDH SINGH *v.* SOHUN KOOER [4 N. W., 135

477. ———— *Order for postponement arriving after sale had been held—Civil Procedure Code, 1877, ss. 311, 312.*—On the day fixed for the sale of certain immoveable property in the execution of a decree, the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it.

478. ———— *Sale held after postponement by Court—Order for postponement not reaching the conducting officer—Material irregularity in conducting sale—Civil Procedure Code, s. 311.*—The Court executing a decree passed an order postponing a sale in execution, but the order failed to reach the officer conducting the sale, and the sale was consequently held. The judgment-debtor applied to have the sale set aside as void. *Held* that the effect of the Court's order for postpone-

of s. 311 of the Civil Procedure Code; that consequently it was not necessary to show that the defect had caused substantial loss to the judgment-debtor; and that the Court could not confirm the illegal sale, but must hold it to be void. *Sukhdeo Rai v. Sheo Ghulam, I. L. R., 4 All., 332; Ram Dial v. Mahtab Singh, I. L. R., 3 All., 701;* and *Ganga Prasad v. Jag Lall Rai, I. L. R., 11 All., 333,* referred to SANT LAL *v.* UMRAO UN-NISSA [I. L. R., 12 All., 96

479. ———— *Code of Civil Procedure (Act XIV of 1882), s. 545—Order passed by Appellate Court for stay of execution—Sale held before communication of such an order.*—An order of an Appellate Court under s. 545, Civil

[1 C. W. N., 226

480. ———— *Postponement of sale—Proclamation of adjourned sale.*—A proclamation of thirty days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor. S. 225 of the Civil Procedure Code, 1859, related to a re-sale, and not to a postponed sale. BUDREE NATH SHUTT *v.* CHUNDER SHEKUR MAN SINGH [1 W. R., Mis., 3

NOORUL HOSSEIN *v.* OMATOOL FATIMA [25 W. R., 34

481. ———— *Postponement of sale—Necessity for fresh proclamation.*—Where a sale is postponed, a fresh notice and proclamation ought to issue. SHOSHEE MOOKHEE BURMONYA *v.* DWARKANATH BISWAS . . 6 W. R., Mis., 84

482. ————*Postponement of sale.—Notice—Necessity for fresh proclamation—Act VIII of 1859, s. 249.*—Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the

OKHOY CHUNDER DUTT *v.* ERSKINE [3 W. R., Mis., 11

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

483. ———————— *Postponement of sale—Sufficient notice of sale—Necessity for*

484. ———————— *Postponement of sale—Necessity for fresh proclamation.*—Where a sale was fixed for the 21st November, but delayed until the 22nd, without any order of postponement,

485. ———————— *Omission to issue fresh proclamation—Material injury.*—A

ever, took place on the day originally fixed, but no fresh proclamation was issued, although it was announced previous to the sale that only *A*'s rights and interests would be sold. *Held* that the sale was

BHOOBUN JOY SHAHA . . 6 C. L. R., 237

486. ———————— *Indefinite post-*

another date for the sale, and where, in consequence of an indefinite postponement, an estate has been purchased for an inadequate price, and especially by

487. ———————— *Civil Procedure Code, 1877, s. 290—"Consent"—Lapse of time between proclamation and actual sale—Postponement of sale.*—An application made on the day of

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion without any application for

BUNS SAHAI *v.* BHAIRO PERSHAD SINGH [I. L. R., 5 Calc., 259

S. C. HURBUNS SAHAI *v.* BHAIRO PERSHAD [4 C. L. R., 23

See also BHEKRAJ KOOERI *v.* GENDH LALL TEWARI I. L. R., 5 Calc., 878

488. ———————— *Civil Procedure Code (Act XIV of 1882), s. 291—Omission by con-*

489. ———————— *Agreement as to*

490. ———————— *Sale on a holiday when Court is closed.*—A sale in execution of a decree is illegal if made on a holiday, whether it is a fixed holiday or only a day which the Courts are closed by order of the High Court. HARO JEMADAR *v.* JADUB CHUNDER HOLDAR . 3 W. R., Mis., 24

491. ———————— *Sale on close holiday—Irregularity in publication or conduct of sale.*—The sale of immoveable property by an Ameen

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale. RISHAM MAHTON v. SAHIB-UN NISSA . I. L. R., 3 All., 333

492. ——— *Sale under two*

493. ———

IN THE MATTER OF VEERAPAH CHETTY [6 B. L. R., Ap., 37: 14 W. R., 405

494. ——— *Purchase by decree-holder without permission of Court—Civil Procedure Code (Act XIV of 1882), ss. 294, 311—Substantial injury*—Under the terms of s 294 of

495. ——— *Civil Procedure Code, 1882, s. 294—Validity or otherwise of sale.*—In a suit in which it was contended that a purchaser at a sale in execution of a decree had, under

CHINTAMANRAV v. VITHABAI [I. L. R., 11 Bom., 588

496. ——— *Civil Procedure*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

is also the law under Act XIV of 1882; but such a purchase may be set aside by the Court on application under s. 294 as being irregular. PARAMASIVA v. KRISHNA . . . I. L. R., 14 Mad., 498

497. ——— *Purchase by*

XIV of 1882), and not by separate suit. GENU v. SAKHARAM . . . I. L. R., 22 Bom., 271

498. ——— *Civil Procedure*

the sale, and no instrument of assignment of the decree had been executed,—*Held* that the auction-purchaser was not a decree-holder within the meaning

DAKSHINA MOHAN ROY v BASUMATI DEBI [4 C. W. N., 47

499. ——— *Purchase by decree-holder—Refusal of application by judgment*

[I. L. R., 10 Calc., 70

500. ——— *Purchase by decree holder—Material irregularity—Dissuading purchaser from bidding—Civil Procedure Code (Act X of 1877), s. 311—Leave to bid—Decree holder related to manager of defendant.*—When

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the

of which the manager of the infant defendant was one of the members, and it would in fact be a purchase by an agent of the property of his principal. WOOPENDRO NATH SIRCAR *v* BROJENDRONATH MUNDUL [I. L. R., 7 Calc., 346 : 9 C. L. R., 263

501. —————— *Purchase by decree-holder—"Material irregularity"—Liberty to bid—Conduct calculated to deter bidders—Civil Procedure Code (Act X of 1877), ss. 294, 311.*—The holder of a decree, in execution of which property is sold, is absolutely bound, under s. 294 of Act X of 1877, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid unless he has got explicit permission. The use at a sale of language by an intending bidder in disparagement of the property for

502. —————— *Disparaging marks by bystanders or purchasers other than the ecree-holder—Notice of sale—Practice regarding les in execution of decrees—Adjournment of sale —Civil Procedure Code (Act XIV of 1882), . 311, 291.*—Disparaging remarks made by

oyee Burroanee, 12 C. L. R., 404, followed.

sale in execution of decrees on a list, and to,

503. —————— *Civil Procedure ode (1882), s. 311—Position of decree-holder who as obtained leave to bid—Dissuading persons*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Held on appeal to the Privy Council.—A decree-holder who has obtained leave to bid at a judicial sale is, in regard to restrictions upon him, in the same position as any other purchaser. A charge against a bidder that he and those who have acted in concert

had, in the opinion of the High Court, amounted to a fraud upon the Court executing the decree, and entitled the petitioner to have the sale set aside on the ground that in point of law no leave to bid had

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

been granted. *Held* by the Judicial Committee

4 C. W. N., 227

504. ——————— *Purchase by*

which were joint property of the father and son. NARAYAN DESHPANDE *v* ANAJI DESHPANDE [I. L. R., 5 Bom., 130

505. ——————— *Rejection of highest bid—Abortive sale caused by act of judgment-debtor—Highest bidder declared not the purchaser—Validity of sale*—Three attempts to sell

was justifiable and the sale valid MOHESH NARAIN SINGH *v.* KISHNANUND MISSER . Marsh., 592 [2 Ind. Jur., O. S., 1; 5 W. R., P. C., 7 9 Moore's I. A., 324

506 ——————— *Deposit by purchaser—Purchase by decree-holder.*—At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be

any other auction-purchaser. CHULKOO DUTT JHA *v.* LEELANUND SINGH W. R., 1864, Mis., 30

507. ——————— *Purchase by decree-holder—Payment not in cash, but by giving*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

objection to the sale. KHELLAT CHUNDER GHOSE *v.* KESHUB CHUNDER PAUL CHOWDRY [16 W. R., 46

508. ——————— *Payment of purchase-money—Civil Procedure Code, 1859, ss. 254, 256, 257—Default in making deposit.*—Directions as to the payment of the purchase-money at sales in execution of decree, arising under s 254, Act VIII of 1859, were to be dealt with as provided by that section, and did not fall under ss. 256 and 257. A default under s. 254 was not an "irregularity in conducting the sale" under s. 256. BRINDA DEBEE DOSSEE *v.* GOPEE SOONDUREE DOSSIA [6 W. R., Mis., 82

509. ——————— *Payment of purchase-money—Civil Procedure Code, 1877, s. 294, and ss 306, 313—Set-off of purchase-money—*

and such deposit must be made in cash. The option

510. ——————— *Payment of purchase-money—Civil Procedure Code, 1877, s. 306—Failure to pay deposit of purchase-money required by that section.*—The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay a deposit of 25 per cent. on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property. INTIZAM ALI KHAN *v.* NARAIN SINGH I. L. R., 5 All., 316

511. ——————— *Failure by purchaser to make the deposit required by s. 306 of the Civil Procedure Code—Material irregularity in*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

part of the officer conducting the sale to receive, the deposit of 25 per cent. on the amount of the purchase- [illegible]

SARWAN SINGH . . I. L. R., 16 Calc., 33

512. ——————— *Inability of purchaser to make deposit—Re-sale—Substantial injury—Civil Procedure Code (Act X of 1877), s. 293.*—At a sale in execution of a decree the property was knocked down to a bidder at R260. The bidder was unable to make a deposit, and the property was immediately put up for sale and re-sold [illegible]

S. C. BEPIN CHUNDER SHICKDAR *v.* MODHOO SUDUN CHOWDHURI . . 12 C. L. R., 316

513. ——————— *Omission to make deposit—Default of purchaser after sale of* [illegible]

default being made by the purchaser, in directing the sale of any further portion of the debtor's property, it being open either to the judgment-creditor [illegible]

[8 C. L. R., 41

514. ——————— *Failure to make deposit—Re-sale without notice—Irregular procedure.*—At a Court-sale in execution of a decree, *T* b d R3,550 for the judgment-debtor's land on the 24th March 1882, but the Ameen re-sold the property the next day for R2,500 on the ground that the deposit was not duly made. *T* objected on the 28th March and a fresh sale was ordered by the Court without giving notice to the judgment-debtor, and the land was sold for R2,700 on the 13th June. On the 13th July the judgment-debtor applied to [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

515. ——————— *Failure to pay purchase-money—Re-sale.*—At a sale in execution of decree, certain property was knocked down to a bidder, who made default in payment of the purchase-money. Subsequently the Judge again put [illegible]

GOUR CHUNDER BISWAS *v.* CHUNDER COOMAR ROY [I. L. R., 8 Calc., 291 : 10 C. L. R., 236

516. ——————— *Failure to pay deposit—Re-sale on default in deposit—Civil Procedure Code, 1859, s. 253.*—In a re-sale for default under s. 253, Act VIII of 1859, the officer conducting the sale was not bound to commence from the next highest bid below that made by the defaulter, instead of commencing the sale *de novo.* GOUR MOOKH SINGH *v.* LALLA GOUR SUNKUR

[1 W. R., Mis., 11

517. ——————— *Inadequacy of price.*—Smallness of price is not a sufficient ground for setting aside a sale, unless it be the effect of an irregularity in the sale-proceedings. REET BHUNJUN SINGH *v.* MITTURJEET SINGH . 6 W. R., Mis., 21

NUDDEA KISHORE DOSS *v.* BUNGSHEE MOHUN DOSS . . . . 17 W. R., 21[illegible]

HUBBEBOOL DOSS *v.* ALLENDER HUBBE[illegible] HOSSEIN *v.* LAND MORTGAGE BANK

[14 W. R., 44

ALIMOODDY CHOWDHRY *v.* CHUNDER NATH [illegible]

[24 W. R., 22[illegible]

518. ——————— *Inadequacy of price—Inadequate price produced by* [illegible]

KHODEJA BIBEE *v.* JOHAD ROHEEM

[illegible]

519. ——————— [illegible] *Code (1882), s. 287—Misrepresentation* [illegible]

dure. An under-statement [illegible] perty having been made [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

[illegible]

and that the special remedy provided in s. 311 was applicable, as substantial injury had resulted SAADATMAND KHAN *v* PUL KUAR

[I. L. R., 20 All., 412
L. R., 25 I. A., 146
2 C. W. N., 550

520. ———— On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (*e*) of s. 287 of the Code of Civil Procedure. Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVASAMI NAICKER *v.* RATNASAMI NAICKER

[I. L. R., 23 Mad., 568

521. ———— *Inadequacy of* [illegible]

[illegible] low. LAKSHMI *v.* KRISHNABHAT

[I. L. R., 8 Bom., 424

522. ———— *Inadequacy of price.*—The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale. RUGHOO NATH SINGH *v.* TOODEY SINGH . . . . . . 5 N. W., 19

523. ———— *Inadequacy of* [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

[illegible]

application by the respondent under 24 & 25 Vict., c. 104, s. 15, held that the objections made were insufficient, and directed the Judge to confirm the sale. *Held* by the Privy Council that, although the alleged inadequacy of price was no ground for [illegible]

HURDEO NARAIN SINGH

[L. R., 3 I. A., 230: 26 W. R., 44

Affirming the decision of the High Court in HURDEO NARAIN SAHOO *v.* GIRDHAREE SINGH

[19 W. R., 227

524. ———— *Inadequacy of price—Error in notice of sale.*—Mere inadequacy of price is not a sufficient ground for setting aside a sale in execution if no substantial injury has been [illegible]

525. ———— *Inadequacy of* [illegible]

526. ———— *Material irregularity—Code of Civil Procedure (1882), ss. 291 and 311—Sale at inadequate price owing to hour of sale not being fixed.*—Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain [illegible]

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

is sufficient under s. 311 of the Code, if the evidence, though not "direct evidence," shows that the injury was a necessary result of the irregularity complained of. *Tassaduk Rasul Khan v. Ahmed Husain, I. L. R., 21 Calc., 66 : L. R., 20 I. A., 176,* explained. SURNO MOYEE DEBI v. DAKINA RANJAN SANYAL [I. L. R., 24 Calc., 291

527. ———— *Civil Procedure Code (1882), ss. 291 and 311—Material irregularity—Substantial loss—Inadequacy of price*—Where a material irregularity is proved to have occurred in the conduct of a Court-sale, and it is shown that the price realized is much below the true value, it may ordinarily be inferred that the low price was a consequence of the irregularity, even though the manner in which the irregularity produced the low price be not definitely made out. When a sale is adjourned under s. 291, the provisions of that section must be followed with exactitude. VENKATA SUBBARAYA CHETTI v. ZAMINDAR OF KARVETINAGAR . . . I. L. R., 20 Mad., 159

528. ———— *Sale at an in-*

the defendant was apparently the only bidder, and he purchased six tenures at an inadequate price, the sale was reversed as fraudulent and illegal. SREEKUNT DOSS v. RAMJEEBUN ROY . 18 W. R., 342

529. ———— *Inadequacy of*

the origin one. GOBIND CHUNDER MOOKERJEE v. RAM KOMUL CHATTERJEE . . 25 W. R., 364

530. ———— *Inadequacy of price of property*—The market value of a property is not the value which ought to be taken as the standard at an auction-sale in execution of a decree

531. ———— *Inadequacy of price—Substantial injury—Civil Procedure Code (Act XIV of 1882) s. 311*—The relative cause and effect between a proved material irregularity and inadequacy of price may either be established by

direct evidence or be inferred where such inference

the price *Macnaghten v. Mahabir Pershad Singh, I. L. R., 9 Calc., 656,* and *Lala Mobaruk Lal v. Secretary of State for India, I. L. R., 11 Calc., 200,* referred to. GUR BUKSH LALL v. JAWAHIR SINGH . . . . I. L. R., 20 Calc., 599

(c) SUBSTANTIAL INJURY.

532. ———— *Proof of substantial injury—Civil Procedure Code, 1859, s. 256*—Even where material irregularity had occurred, as from non issue of proclamation of sale, the party applying to set aside the sale on that ground was bound, under s. 256, Act VIII of 1859, to prove that he had sustained substantial injury thereby. JOY TARA DOSSEE v. MAHOMED HOSSEIN [2 W. R., Mis., 2

NILMONEE SHAHA v. RAM CHURN DEB [6 W. R., Mis., 45

ABOOL MAHOMED v. SHIB DOOLAREE TEWAREE [11 W. R., 114

LAKE RAM v. MOHESH DOSS . 12 W. R., 488

NUJMOODDEEN AHMED v. ABDOOL AZEEZ [15 W. R., 95

CHUNDER SEKHUR DEB v. JADUB CHUNDER SETT [19 W. R., 78

SANWUL SINGH v. MAKHUN PANDEY [2 N. W., 143

SHEO PROKASH MISSER v. HURDAI NARAIN [22 W. R., 550

This now forms an express enactment in the Code.

533. ———— *Presumption as to irregularity and injury—Civil Procedure Code (Act XIV of 1882), s. 311*—Where an application is made to set aside a sale in execution of a decree

in Council, I. L. R., 11 Calc., 200, discussed. SATISH CHUNDER RAI CHOWDHURI v. THOMAS [I. L. R., 11 Calc., 658

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

534. ———————— *Presumption as to irregularity and injury—Civil Procedure Code (Act X of 1877), s. 311—Witnesses, Laches in summoning.*—On an application under s. 311 of the Civil Procedure Code (Act X of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that, seventeen days after the applicant had applied for proclamation to be issued to his witnesses, he deposited the requisite fees; and that subsequently there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses,—*Held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses. *Gopee Nath Dobay* v. *Roy Luchmeeput Singh, I. L. R., 3 Calc., 542,* considered. BONOMALI MOZUMDAR *v.* WOOMESH CHUNDER BUNDOPADHYA

[I. L. R., 7 Calc., 730 : 9 C. L. R., 341

535. ———————— *Civil Procedure Code, s. 311—Alleged irregularity attending sale in execution—Failure to prove substantial injury*

occurred in order to bring the case within s. 311. *Macnaghten* v. *Mahabir Pershad Singh, I. L. R., 9 Calc., 656,* referred to and followed. ARUNACHELLAM *v.* ARUNACHELLAM . . . I. L. R., 12 Mad., 19

of substantial injury thereby to the judgment-debtor. As to this, the latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN . . . . I. L. R., 21 Calc., 66

[L. R., 20 I. A., 176

537. ———— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—It is not

but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause, by means of direct evidence. *Tassaduk Rasul Khan* v. *Ahmad Husain, I. L. R., 21 Calc., 66,* referred to. JAGAN NATH *v.* MAKUND PRASAD

[I. L. R., 18 All., 37

538. ———————— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—*Held* that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is necessary for the applicant to show not only that there has been a material irregularity in publishing or conducting the sale, but also that substantial injury had been sustained in consequence of such material irregularity. *Arunachellam* v. *Arunachellam, I. L. R., 12 Mad., 19,* and *Tasadduk Rasul Khan* v. *Ahmed Husain, I. L. R., 21 Calc., 66,* referred to. SHIRIN BEGAM *v.* AGHA ALI KHAN . . . I. L. R., 18 All., 141

See also SURNOMOYEE DEBI *v.* DAKINA RANJAN SANYAL . . . I. L. R., 24 Calc., 291

and VENKATA SABBARAYA CHETTI *v.* ZAMINDAR OF KAROETINAGAR . I. L. R., 20 Mad., 159

(d) EXPENSES OF SALE

539. ———— **Liability for expenses of sale**—*Sale set aside for irregularity.*—Where an

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

(a) COMPENSATION.

540. ———— **Right to compensation for**

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

541. ——— *Bond fide purchaser—Inquiry as to title—Act XI of 1855.*—A ... within ... ad made ... enquiries ... therefore ... further ... ighbours was ejected by one who showed a better title,—*Held* that he was not entitled to compensation under Act XI of 1855 GOUR GOPAL DUTT *v.* BISSONATH GHOSE . . . . Cor., 41

(*b*) RECOVERY OF PURCHASE-MONEY.

542. ——— Right to refund of purchase money—*Mode of recovery—Civil Procedure Code, 1859, s. 258.*—Under s. 258, Act VIII of 1859, when a sale of immoveable property is set aside, the purchaser is entitled to recover back his purchase-money. If the Court, reversing the sale, omit to make such order, the purchaser can sue to recover the money from the person who has received it. GREESH CHUNDER POTTAR *v.* LOOKHOODA MOYEE DABEE . . . . . 1 W. R., 55

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA . . . . . . 2 Agra, 50

543. ——— *Civil Procedure Code, 1859, s. 258.*—...

NATH ROY . . . . . . 6 W. R., 147

544. ——— *Subsequent reversal of decree on appeal.*—The plaintiff purchased certain property at a sale under an execution upon a ...

S. C. ROY MOHUN LALL MITTER *v.* CHOOLUN SINGH . . . . . . 1 Hay, 438

545. — *Civil Procedure Code (Act XIV of 1882), ss. 310A, 315—Application by a purchaser for refund of purchase-money—Madras City Civil Court, Jurisdiction of*—A house was attached and sold as the property of one against whom a decree of the Small Cause Court, Madras, had been passed. The property was brought to sale, and the purchase-money was paid into the Madras City Civil Court. The sale was set aside under Civil Procedure Code, s. 310A. Part of the purchase money was attached in execution of subsequent decree passed against the same defendant by the Small Cause Court, and was remitted to that ...

546. ——— *Sale set aside for want of interest of debtor in the property.*— ...

v. PREMCHAND RAICHAND AHMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND . 5 Bom., O. C., 83

Contra, KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURUPADAPA . . 6 Bom., A. C., 258

KALU BIN VISAJI *v.* DAMODHAR GOBIND [9 Bom., 92

MAHOMED BASIRULLA *v.* ABDULLA [4 B. L. R., Ap., 35 : 15 W. R., 198 note

547. ——— *Proportionate* ...

[3 N. W., 67

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA . . . . 2 Agra, 50

548. ——— *Want of interest of debtor—Right, title, and interest*—S. 258, Act VIII of 1859, only applied to cases where a ... terest at all or less than was supposed, was no ground for setting aside the sale or refunding the purchase-money. RAJIB LOCHUN *v.* BIMALAMONI DASI. . . . . 2 B. L. R., A. C., 82

S. C. RAJEEB LOCHUN SAWUNT *v.* MOHESSUREE DOSSEE . . . 10 W. R., 365

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

549. ———— *Suit to recover purchase-money—Want of interest of debtor—*

execution had been set aside. Where therefore certain shares were attached by the execution-creditor as the property of the execution-debtor, and were afterwards sold in execution by the Sheriff, and the execution-orders and warrants and the Sheriff's proclamation of sale contained assertions of interest of the execution-debtor in these shares, whereas he had no such interest,—*Held* that the purchaser at the

thereafter was against the execution-creditor only. *Bank of Hindustan* v. *Premchand Raichand, 5 Bom., O. C., 83,* commented upon. FRAMJI BESANJI DASTUR v. HORMASJI PESTANJI

[I. L. R., 2 Bom., 258

550. ———— *Suit to recover purchase-money when judgment-debtor had no interest—Act VIII of 1859, ss 257, 259* —Where an

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

s. 257 SOWDAMINI CHOWDHRAIN v. KRISHNA KISHOR PODDAR

[4 B L. R., F. B., 11: 12 W. R., F. B, 8

See also RAJIBLOCHUN v. BIMALAMONI DASI

[2 B. L R., A C, 82

551. ———— *Suit for refund of purchase-money for property bought at auction-sale in execution of decree—Uncancelled sale.*—The plaintiff purchased at an auction-sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property. The sale was confirmed

applied to cases where the auction-sale had been

552. ———— *Want of interest in debtor—Civil Procedure Code, 1882, ss 313, 315—Purchase of property where debtor has no saleable interest.*—Under s 313 of the Code of

and have been deprived thereof. SIVARAMA v. RAMA . . . . I. L R., 8 Mad., 99

553. ———— *Suit by purchaser for purchase-money—Civil Procedure Code, 1882, ss. 313, 315—Debtor without saleable interest.* —*Per* STRAIGHT, OLDFIELD, and TYRRELL, JJ.—

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

and he is not limited to the special procedure in the execution department mentioned in s. 315 MUNNA SINGH *v.* GAJADHAR SINGH . I. L. R., 5 All., 577

554. ———— *Purchaser de-*

of a decree under the provisions of Act VIII of 1859,

Contra, HIRA LAL *v.* KARIMUNNISSA [I. L. R., 2 All., 780

555. ———— *Collusion with judgment-debtor—Civil Procedure Code, 1882,*

[I. L. R., 8 Mad., 101

556. ———— *Civil Procedure Code, 1877, s. 315—Suit to recover purchase-money where debtor is found to have no interest.*—A purchaser at an auction sale of property found subsequently in a suit to which the decree-holder was a party to belong to a third party, is entitled to re-

557. ———— *Suit to recover purchase-money—Civil Procedure Code, ss. 313, 315—Want of saleable interest—Order confirming sale, Effect of, on suit.*—*P* bought certain land at a sale in execution of a decree. Before the purchase-

to

on

sal

the petition and confirmed the sale on the 15th March 1881. The sale was subsequently set aside by a decree obtained by *V* in a suit against *P* and the

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

judgment-creditor. *P* then sued the judgment-creditor to recover the purchase-money. The District Judge dismissed the suit on the ground that *P*

558. ———— *Civil Procedure Code, ss. 295, 315—Execution of decree—Suit by purchaser for return of purchase-money.*—Where

against the person into whose hands such price has come as such person's rateable share of the

559. ———— *Suit by the purchaser in execution-sale to recover the purchase-money—Civil Procedure Code (Act XIV of 1882), s. 315—Want of saleable interest.*—The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He then sued in 1889 to recover the purchase-money paid by him, on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that the son of the judgment-debtor had

judgment in that suit was now admitted in evidence against the defendant. *Held* that the judgment

560. ———— *Recovery of purchase-money—Portion of the property sold belonging to a stranger—Civil Procedure Code (1882), ss. 313, 315, and 316—Rights of purchaser—Warranty of title.*—Where a Court-sale in execu-

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

recover back his purchase-money when he finds that the judgment debtor has no saleable interest at all. The implied warranty of title in respect of sales by private contract cannot be extended to Court-sales except so far as such extension is justified by the processual law in India, *viz.*, by s. 315 of the Civil Procedure Code. *Dorab Ally Khan* v. *Abdool Azeez, L. R., 5 I A, 116*, followed. SUNDARA GOPALAN v. VENKATA VARADA AYYANGAR

[I. L. R., 17 Mad., 228

561. ——— *Return of purchase-money when judgment-debtor found to have no saleable interest in property sold—Procedure for finding the fact of his having no interest—Notice to judgment-creditor—Parties—Civil Pro-*

one *B*, who sued *A*, the judgment-debtor, and *E*,

purchase-money paid at an execution sale is to be

a party, or at any rate of which he had notice. In the present case there was no finding on which the Subordinate Judge could base his order for the restitution of the purchase-money. VITHODA v. ESAT . . . . I. L. R., 18 Bom., 594

562. ——— *Sale set aside —Suit by auction-purchaser to recover purchase-*

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

put up for sale on the 20th July 1875 under the provisions of Act VIII of 1859, and was purchased by *K*. *W* subsequently sued *K* to establish his claim to the property and to have the sale set aside, and on the

W., 67; and *Doolhin Hur Nath Koonweree* v. *Baijoo Oojha, 2 Agra, 50*, distinguished. *Held* also that the auction purchaser could not have applied under s. 315 of Act X of 1877 for the return of the purchase-money, as the provisions of that section could not have retrospective effect, and would not apply to a sale which had taken place before that Act came into operation. *In the matter of the petition of Mulo, I. L R., 2 All., 299*, dissented from

563. ——— *Sale by Sheriff under writ of fieri facias—Sale subsequently declared invalid—Suit to recover purchase money—Liability of execution-creditor—Civil Procedure Code, 1859, ss. 201, 242*—The plaint in a suit by *A*

the property of *C* in Bengal, Behar, and Orissa, or in any other districts which were then annexed or made subject to the Presidency of Fort William in Bengal; that the writ did not authorize the execution thereof against immoveable property in Oudh;

chased by him, the sale was pronounced to be null and void and was set aside, and *D* was removed from

SALE IN EXECUTION OF DECREE —*continued.*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

covenants in the conveyance do not extend, cannot recover the purchase-money from his vendors; second, because the Sheriff was not the agent of *B* for the sale of the property, and therefore no privity of contract existed between *B* and *D*; third, because *D* having been for some time in possession of the property and in receipt of the profits thereof, there had not been a total failure of consideration, and the plaintiff accordingly could not maintain the action in its present shape, *viz.*, for money had and received. The judgment of the High Court in *Bissessur Lall Sahoo v. Ramtuhul Singh, 11 B L R, 121,* explained by PHEAR, J., and ss 201 and 242 of Act VIII of 1859 observed upon. DORAB ALLY KHAN *v.* MOHEEOODDEEN

[I. L. R , 1 Calc., 55 : 24 W. R., 372

out warranting that title to be good But if the

position as an ordinary person who has sold that which he had no title to sell. Since there is not in

is governed by the law relating to chattels, rather than by that relating to the sale of real estate. A Sheriff, who in his official capacity seizes and sells property, undertakes by his conduct that he has legal authority to do so. When, from his having acted beyond the territorial jurisdiction of the Court whose

S. C. DORAB ALLY KHAN *v.* ABDOOL AZEEZ

[L. R., 5 I. A., 116 : 3 C. L. R., 529

564. ——— *Payments of purchase-money on an agreement as to possession between purchaser and execution-creditor — Sale subsequently set aside—Suit for purchase-money—Accord and satisfaction.*—On the 9th of October 1866 the Sheriff of Calcutta executed a bill of sale to *A* of

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

a certain talukh situated in Oudh, of which *A* afterwards obtained possession. In consequence of an impression that the sale was illegal, *A* directed the Sheriff not to pay the money to *B*, the execution-creditor, and the money remained in the hands of the Sheriff until the 24th of October 1867, when *A* directed the payment of the money to *B* in consequence of an arrangement then come to between *A* and *B* to the effect that, if *A* should be ousted from the possession of the property within a year, *B* should take measures to reinstate him at his (*B's*) expense. *A* died without heirs in July 1868, and the Government of Oudh, not being aware that *A* had left a will, took possession of the talukh partly as on an escheat and partly because there were arrears of revenue due on the property. On the 2nd of October 1868 an order was passed by the Collector *of the district in which the talukh was situate* declaring the sale by the Sheriff illegal and directing the return of the talukh to its former owners, which was done in April 1869. In a suit brought by *A's* executors against *B* in September 1872 to recover the purchase-money as money had and received, as upon a total failure of consideration,—*Held* that the agreement of the 24th of October 1867 operated as an accord and satisfaction of all rights which *A* might have had to a return of the purchase-money or to damages, and that the only remedy which *A* had was an action on the agreement. *Held* also that no breach of the agreement of 24th of October 1867 had in fact occurred, and that, even if the agreement had been broken, the suit was barred by limitation. DORAB ALLY KHAN *v.* ABDOOL AZEEZ. ABDOOL AZEEZ *v.* DORAB ALLY KHAN

[I. L. R., 6 Calc., 356

565. ——— *Purchase of surplus proceeds of revenue sale afterwards set aside —Suit to recover purchase-money—Voluntary payment.*

In ... the ... decree in his favour in the High Court ... applied to the Collector for *R's* share of the surplus proceeds, but his application was refused In a suit by *B* against *R* to recover the price he had paid at the

SALE IN EXECUTION OF DECREE
—continued.

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

Reversing the judgment of the High Court in BISSESSUR LALL SAHOO v. RAM TURUL SINGH
[11 B. L. R., 121 : 19 W. R., 351

566. ——————— *Suit to recover purchase-money when sale is set aside—Minor—Costs—Fraud.*—A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor brought a suit for a declaration that such sale was invalid and obtained possession of the property from

the auction-purchaser was not a party to, or cognizant of, the fraud on the part of the decree-holder,

chase-money from the decree-holder *Held* also that,

to recover the purchase-money, and, assuming that he was innocent of fraud, that, having purchased with the knowledge that the property was the property of a minor and without ascertaining that the sale was justified by the terms of the decree, he could not recover the purchase-money. MAKUNDI LALL v. KAUNSILA . . . I. L. R., 1 All., 568

567. ——————— *Decree passed*

a sale held in execution of a decree obtained against

the lands were situated was transferred from the

568. ——————— *Civil Procedure Code, 1859, ss. 256, 258—Right on sale being set*

SALE IN EXECUTION OF DECREE
—concluded.

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*concluded.*

aside for irregularity—Right to recover money expended for benefit of indigo factory.—When a sale is set aside under Act VIII of 1859, s. 256, where the purchaser had, before the sale was confirmed, taken possession, laid out money, and received rents or profits, and he is turned out some time after by

depend upon the circumstances under which the purchaser took possession, and the nature of his outlay, whether he ought in equity to be allowed to claim reimbursement of the money expended by him Where a purchaser *bonâ fide* took possession of the property, and from time to time laid out money thereon, because he thought that otherwise from its peculiar nature it would become even worse than

to the estate, he accounting for the rents and profits realized by him MORGAN v. ABDOOL HYE
[23 W. R., 393

Confirming order setting aside sale. ABDOOL HYE v. MACRAE . . . . . 23 W. R., 1

569. ——————— *Suit by purchaser for interest on purchase-money—Act VIII of 1859—Act X of 1877, s. 315.*—A judgment-debtor, whose property had been sold in execution of a decree under Act VIII of 1859, appealed from the order disallowing his application to set aside the sale, after Act X of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree holder for interest on the purchase-money and the expenses of the sale, the purchase money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses

SALE OF GOODS.

See CASES UNDER CONTRACT.

See CONTRACT ACT, s. 73
[15 B. L. R., 276

See CONTRACT ACT, s. 78.
[I. L. R., 4 Calc., 801
I. L. R., 15 Calc., 1

SALE OF GOODS—*continued.*

See LIEN . I. L. R., 18 Calc., 573
[L. R., 18 I. A., 78

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R., 16 Mad., 238
[I. L. R., 17 Bom., 520
I. L. R., 20 Mad., 97

See SHIPMENTS . 5 B. L. R., 619

——— Agreement for—

See STAMP ACT, 1879, SCH I, ART. 46
[I. L. R., 14 Bom., 102

See STAMP ACT, 1879, SCH. II, ART 2
[I. L. R., 10 Mad., 27
I. L. R., 15 Mad., 150

———Note or memorandum of—

See STAMP ACT, 1879, SCH. I, ART 46
[I. L. R., 14 Bom., 102

——— Appropriation to vendee—*Passing of property to vendee—Bankruptcy of agents for purchase—Unpaid vendor—Stoppage in*

ordered from *B, R & Co*, in London, 100 bales of grey shirtings at 7*s* 10*d* per piece f. o b, November-December shipment In order to carry out this order, *B, R & Co.* purchased goods of the required description from *D & Co*, of Manchester. The heading of the invoice of the goods supplied by *D & Co* contained these words "Proceeds to be remitted to *B. R & Co.*, London, specifically for the

protection of the enclosed bill, or any other of your

steamers *Nubia*, *Clan Drummond*, *Inchulva*, and

made
B, R
insura
ments were made before the 1st December 1890, except the 12 bales by the *Wistow Hall*, which were shipped on that day On the several shipments being affected, *B. R & Co* accepted bills of *D & Co.*, payable three months after date. The bills of lading of the bales shipped in the *Nubia*, *Clan Drummond*, and *Hispania* were endorsed in blank by *B, R & Co*, and sent by post to *B. A & Co.*, of Bombay. The *Nubia* arrived at Bombay in November, and the plaintiffs received the 13 bales shipped by her, *B, A & Co.* having endorsed the bill of lading to the plaintiffs No specific payment was made by the plaintiffs in respect of these bales, but at that time they had a sum standing to their credit in the books of *B, A & Co.* The invoices of 25 more bales, *viz.*, 13 bales *ex Clan Drummond* and 12 bales *ex Hispania*, arrived in Bombay later in November, and were handed to the plaintiffs. On the 1st December 1890 the plaintiffs paid R25,000 to *B, A & Co.* Neither the *Clan Drummond* nor the *Hispania* had then arrived in Bombay On the 4th December 1890 *B, R & Co* suspended payment, and on that day a receiving order was made vesting their assets in the first defendant, *W*, and on the next day *P* was

December 1890 *B, A & Co.* suspended payment in Bombay. On the 13th December 1890 *D & Co.*

board The other five steamers with the remaining 62 bales duly arrived in Bombay and went into dock. On the 22nd January 1891 the *Roumania*, the *City of Edinburgh*, and the *Wistow Hall* had landed all

on board. On that day (22nd January 1891) *R, S &* *Co.*, on behalf of *D & Co*, wrote to the several agents of the above steamers notices of stoppage in transit
Wistow
These
ry 1891.
nt of the
R25,000 by the plaintiffs to *B, A & Co* in Bombay was a payment for and on account of the 100 bales In respect of transactions before bankruptcy, a payment to *B, A & Co.* was a payment to *B, R & Co.*, but if that were not so, *B, A & Co.* were agents to receive payment (2) That on the goods being shipped at Liverpool, if not at an earlier date, the property in them passed from *D & Co* to *B, R*

SALE OF GOODS—*concluded.*

until their price was paid by the plaintiffs with the charges (3) That the plaintiffs were entitled, as

lading of any of these bales from the plaintiffs. (4) On the evidence, that when *D & Co.* forwarded the goods to *B, R & Co* at Liverpool, they really started the goods on their voyage to Bombay, and that the transit lasted until the bales were "at home" in Bombay Until then the right of *D & Co.* to stop the goods in transit lasted. (5) That effectual notice on behalf of *D & Co.* to stop in transit was given in respect of the 13 bales *ex Roumania* by the notice sent by *R, S & Co* on the 15th December 1890. The general notice given on that day to the agents of the *Roumania* not only as to specific bales, but as to any other bales shipped on account of *G* and *R D* to *B, A & Co*, although indefinite, covered the shipment by the *Roumania*, and was given in time to prevent the bales on board that ship from reaching "home" (6) That effectual notice by *R, S & Co.* on behalf of *D & Co.* to stop in transit was given in respect of the 13 bales *ex Inchulra* and the 3 bales (out of the 12) *ex Eden Hall* which were still on board and undischarged at the date of the notice of the 2nd January 1891 (7) As to the 12 bales *ex Hispania* landed prior to the notice of the 15th December and as to the 12 bales *ex City of Edinburgh* and the 9 (out of the 12) *ex Eden Hall* landed before the notice of the 2nd January 1891 and as to the 12 *ex Wistow Hall*, in respect of which no notice at all was given, that the plaintiffs were entitled to them. (8) That the goods ceased to be in transit when landed in dock in Bombay. LILLADHAR JAIRAM NARRANJI *v.* WEEFORD . I. L. R., 17 Bom., 62

SALE-PROCEEDS.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[B. L. R., Sup. Vol., 13, 927

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

See SALE FOR ARREARS OF REVENUE—SALE-PROCEEDS.

——— Distribution of—

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

——— Right of Government to—

See PAUPER SUIT—SUITS.
[I. L. R., 1 All., 596

SALE-PROCEEDS—*concluded.*

——— Suit for refund of—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . W. R., F. B, 180
[I. L. R., 12 All., 548

——— Suit to recover surplus—

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 18 Calc., 234

See LIMITATION ACT, 1877, ART. 62.
[I. L. R., 18 Calc., 234

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 20 Calc., 51

See LIMITATION ACT, 1877, ART 145.
[I. L. R., 18 Calc., 234

See MORTGAGE—POWER OF SALE.
[I. L. R., 16 Bom., 141

——— Taking out of Court—

See LIMITATION ACT, 1877, ART 179—STEP IN AID OF EXECUTION—SUIT AND OTHER PROCEEDINGS BY DECREE-HOLDERS.
[6 W. R., Mis., 49
15 W. R., 182
I. L. R., 6 All., 366
I. L. R., 10 Calc., 549
I. L. R., 17 Mad., 165
I. L. R., 22 Bom., 340

SALSETTE.

——— Law applicable in—

conquered territory continues in force until altered by the Crown or the Legislature. The Island of Salsette was conquered from the Marathas by the British in 1774, and the law of succession for the Christian inhabitants of the island remained unaltered until the passing of the Indian Succession Act (X of 1865). Until that Act was passed, the law of primogeniture was not in force among the Christian inhabitants of Salsette. In the absence of a widow and daughter, the sons took the property of their father in equal shares. *Quære*—Whether they did so under the Hindu law or the Portuguese law, or by force of usage existing among them. A mortgage of certain property was made in 1875 by the eldest

SALSETTE—*concluded.*

at the sale purchased the property himself. The plaintiff now sued to redeem the property, and the question arose (1) whether, under the law applicable to Christian inhabitants of Salsette, the eldest brother *P* had succeeded on the father's death to the

family property. He and his brothers took equal shares in the property of their father. (2) That the mortgage by *P* had been authorized by the family and was for family purposes, and was binding upon the family property. Although *P* and his brothers could not be regarded as co-parceners under Hindu law, yet, having regard to the fact that they were

member of the Christian community of the Island of Salsette is entitled to deal with his share in ancestral property by will. JALBHAI ARDESHIR SHET *v.* MANOEL . . . . I. L. R., 19 Bom., 680

SALT.

———Search for contraband—

See ESCAPE FROM CUSTODY.
[I. L. R., 19 Mad., 310

SALT, ACTS AND REGULATIONS RELATING TO—

1. BENGAL.

1. ——— Beng. Reg. X of 1819, s. 36—*Possession of salt—Arrangement by Government.*—The absence of a protective document makes salt contraband. But where the Government has made such an arrangement with a particular party as places him in possession of a large quantity of salt,

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

1. BENGAL—*continued.*

2. ——— Beng. Act VII of 1864, ss. 12 and

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by s. 12 of Bengal Act VII of 1864, unprotected by a rowana or pass, the salt is contraband and liable to seizure, and the parties transporting it are punishable under s. 16. It matters not whether any attempt or intention to sell is proved or not. QUEEN *v.* OFATULLA . . . . 6 B. L. R., 381

S. C. GOVERNMENT OF BENGAL *v.* AKATOOLLAH
[15 W. R., Cr., 21

3. ——— s. 16—*Rowanah, Endorsement of, by police or customs officers.*—A rowana as defined by Bengal Act VII of 1864 is complete on the face of it without any certificate by way of endorsement signed by the Superintendent showing that the endorsement made by the preventive officers of customs has been examined by him. S. 16 of Act VII only gives power to fine when the salt is not specified in a rowana. IN THE MATTER OF THE PETITION OF KISHORY MOHUN PRAMANICK
[23 W. R., Cr., 6

4. ——— *Salt carried partly by land and partly by water.*—Where a person who had taken a quantity of salt under a rowana for transit from Calcutta to his golah, part of the journey to be performed by water and part by land, conveyed a portion of it to his golah where the rowana was, and was conveying the rest in two separate batches by land, it was held that he could not be convicted under Bengal Act VII of 1864, s. 16. QUEEN *v.* CHUNDEE CHURN DASS
[22 W. R., Cr., 71

5. ——— ss. 16 and 18—*Possession of contraband salt.*—In a case of conviction under s. 16, Bengal Act VII of 1864, for having in possession contraband salt, the Sessions Judge recommended that it should be set aside on the ground that the salt had already reached its destination, and was not *en route*; s. 18 consequently not applying. The High Court set aside the conviction accordingly. QUEEN *v.* CHUNDRO MOHUN BHOOYA
[22 W. R., Cr., 82

6. ——— ss. 16 and 21—*Possession and sale of salt.*—*A* was convicted under s. 16, Bengal Act VII of 1864, and *B* under s. 21 of the same Act; the former with having had in his possession salt not covered by a rowana, and the latter with having sold to *A* the said salt. *Held* that the conviction of *A* under s. 16 was illegal, the salt in his possession having been a portion of salt for which *B* had taken out a rowana, but that the conviction of *B* under s. 21 was proper, as he had failed to certify the salt sold by him to *A* on the back

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

1. BENGAL—*concluded.*

of the rowana IN THE MATTER OF THE PETITION OF BHAGBUT DEY . . 18 W. R., Cr., 64

7.———— s. 17—*Infliction of penalty on owner and servant.*—In a case of conviction, under Act VII of 1864, of having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or gomashta of the owner who has the salt in his possession, as the possession of the latter is the possession of the former. IN THE MATTER OF THE PETITION OF GUNGADHUR SAHOO . 22 W R., Cr., 9

8. ———— s. 18 — *Confiscation of salt—Power of releasing from confiscation* —By s. 18, Bengal Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowana, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under s. 39, and not in the Magistrate QUEEN *v.* BOIDONATH

[7 W R., Cr., 48

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contraband salt and of his agent who was transporting the salt, and declined to direct the Magistrate to pass sentence on the manjees of the boat in which the salt was being transported when seized, their boat having been already confiscated by the Magistrate QUEEN *v* MODUN MOHUN PAL CHOWDHRY . . . . . 23 W. R., Cr., 7

2 MADRAS.

10. ———— Act XVII of 1840—*Possession of salt-earth.*—Being in possession of salt earth, from which salt may be manufactured, with the object of making salt, is an offence under the salt laws ANONYMOUS . 4 Mad., Ap., 53

11. ———— Mad. Reg. I of 1805, s. 18

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collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not, *per se*, acts prohibited by Regulation I of 1805, s 18. *Semble* —In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence ANONYMOUS

[I. L. R., 3 Mad., 17

12. ———— *Salt-earth, Collection of or possession of.*—The collecting of salt-earth from salt-swamps, or the being in possession of alt-earth for the purpose of making salt, is not an

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

2. MADRAS—*concluded.*

offence within the meaning of s. 18 of Madras Regulation I of 1805. REG *v.* PYLA ATCHI

[I. L. R., 1 Mad., 278

13. ———— Mad. Act I of 1882, s. 26—*Possession of salt-earth.*—The possession of earth impregnated with salt, not being a natural saline efflorescence or deposit, is no offence under s 26 of the Salt Laws Amendment Act, 1882 (Madras). QUEEN *v.* THUNJI . . I. L. R., 7 Mad., 163

14.———— cl. 3; s. 27 (e)—*Salt imported from foreign State, Contraband.*—S. 26 of the Salt Laws Amendment Act (Madras Act I of 1882) makes it penal to import salt by any route not legally sanctioned for that purpose, and also to possess salt known to have been imported in contravention of the salt laws; and s. 27 of the said Act authorizes, *inter alia*, the Governor in Council to make rules for regulating the import of salt by land. No such rules having been passed in 1884, *P* was convicted of being in possession of salt known to have been manufactured in, and imported from, the Native State of Pudukottai. *Held* that the conviction was right. QUEEN-EMPRESS *v.* PODIATHAL . . I. L R, 8 Mad., 342

3 BOMBAY

15. ———— Acts XXVII of 1837 and XXXI of 1850—*Maxim "Omnia præsumuntur contra spoliatorem"—Salt thrown overboard to*

quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and with the assistance of the agent of the owner threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit Where under a permit to pass a certain number of maunds of salt on which duty has been paid, an amount in

16. ———— *Removal of salt—Property in salt naturally formed—Theft* —Dis-

for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Penal Code or Act XXXI of 1850 or XXVII of 1837, though under s. 7 of the latter Ac

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

3. BOMBAY—*continued*

made applicable by s. 8 of the former, the salt removed becomes liable to detention. (*Per* LLOYD and KEMBALL, *JJ.*) REG *v.* MANSANG BHAVSANG [10 Bom., 74

17. ———— Bom. Act VII of 1873—*Act XVIII of 1877—Duty paid under former Act—Effect of new Act by which duty increased coming into operation before removal of salt—Increased duty paid under protest—Suit to recover excess—Set-off—Excise duty—Customs.*—Prior to the 28th December 1877, the excise duty on salt manufactured in Bombay was R1-13-0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act (VII of 1873). The plaintiffs, who were salt merchants, were desirous of ex-

[illegible]

maunds 2,748, had been removed by the plaintiffs

[illegible]

R2-8-0 per maund, and on that day the sarkarkun refused to allow the plaintiffs to remove the balance of the first three lots (*viz*, 2,718 maunds) or the last lot of maunds 10,483, unless an additional duty, at the rate of eleven annas per maund, was paid in

[illegible]

tended that, having paid the duty in respect of the salt comprised in the four applications and the said duty having been received by the Collector before

SALT, ACTS AND REGULATIONS RELATING TO—*concluded.*

3. BOMBAY—*concluded.*

Act XVIII came into force, they were not liable to pay any further duty, and that Act XVIII of 1877 did not apply to the said salt. The defendant contended that the additional duty was rightly levied on the salt, and further claimed to set off against the plaintiff's claims the sum of R9,053 5-0 which the plaintiffs would have been obliged to pay in importing the salt into British Malabar if they had not already paid it to the authorities in Bombay but from payment of which they had been exempted on production of the certificates above mentioned. *Held* that on the 28th December 1877 the plaintiffs had acquired the right to remove the salt, whenever they might think proper, by simply complying with the usual forms required by Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so

[illegible]

strength of its having already paid the duty of R2-8 0 per maund at Bombay, the sum of R9,096-5-0 must be deemed to have been appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar, and was therefore no longer recoverable from the defendant. The plaintiffs, by applying to the Collector of Customs at Bombay for *certificates that the duty had been paid, by presenting* them at the Malabar ports, and claiming, in virtue of such certificates, that the salt should be admitted *free of customs duty, virtually appropriated the* R9,096-5-0 excise duty (which remained in the hands of the customs authorities as money had and received to the use of the plaintiff) to the payment of the enhanced customs duties at such ports. BRITO *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 6 Bom., 251

SALT ACT.

——— Breach of—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. [I. L. R., 4 Mad., 335, 335 note 5 Bom., Cr., 61

SALT ACT (XII OF 1882)

———— s 11—*Limitation prescribed for charging with offence—Fraud in concealing date of offence.*—The provisions of s 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s 11 of the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-EMPRESS *v.* NAGESHAPPA PAI [I. L. R., 20 Bom., 543

SALT-PANS, LEASE OF—

See STAMP ACT, SCH. II, ART 13. [I. L. R., 16 Bom., 546

SALVAGE

See Co-sharers—General Rights in Joint Property.
[I. L. R., 14 All., 273

——— Consolidation of claims for—

See Practice—Civil Cases—Admiralty Court I. L. R., 22 Calc., 511
[3 C. W. N., 67

——— Lien for—

See Lien . I. L. R., 2 Calc., 58

See Small Cause Court, Mofussil—Jurisdiction—Salvage 9 W. R., 252

1. ——— **Principles of salvage lien**—*Right to salvage.*—A claim to salvage is founded on a principle of equity which the Courts of British India are bound to recognize. It accrues irrespectively of the circumstance that the rescue is from a danger incurred on inland waters, or of the circumstance that a portion of the services may be rendered from the shore. A boat laden with indigo seed left Permit Ghat, about three miles above the pontoon bridge over the Ganges at Cawnpore, on the morning of the 6th of August. While the boatmen were endeavouring to cross the stream, the boat struck the bridge at a point where the current was running with a velocity of 30 feet per minute. The boat came athwart two of the pontoons, and by the pressure of the stream canted over on its side. From

to a place of safety, and the cargo was removed and stored in a warehouse. *Held* that a right to salvage accrued Persons in these provinces, to whom a right of salvage has accrued, are entitled to retain the property saved until a reasonable sum has been paid or tendered to them in satisfaction of their claim. Gilmore *v.* Rose . 6 N. W., 311

2. ——— **Services entitling vessel to**

that condition, such services are salvage services. But where there is nothing in those services as regards risk or exertion or other conduct of the salvors to make them differ from ordinary towage services, their reward should be estimated as for towage with salvage liberality. In the matter of the "Alabama" . 2 Ind. Jur., N. S., 139

3. ——— *Towage—Extraordinary towage—Claim of master and crew—Award—Apportionment.*—The S. S. *C*, while employed as a Government transport to convey troops and stores from Bombay to Egypt, broke her screw

SALVAGE—*continued.*

shaft and became disabled. While in that condition, the S.S. *H B* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the S. S. *C* settled the claim of the owners of the S.S *H B* for R37,500, but refused to recognize any separate claim to remuneration to the plaintiffs, the master and crew of the S.S *H B*. *Held* that the services rendered were, under all the circumstances of the case, salvage and not merely towage services, and that R10,000 was a fair remuneration for the master and crew of the salving vessel to be apportioned, R4,000 to the master, the rest to the crew according to their ratings. The plaintiffs held entitled also to one thirty-second part of the freight, if any, which might be recovered by the S.S *C* under her charter party with the Indian Government. If towage leads to the rescue of a vessel in actual danger, or in reasonable apprehension of danger, the services should be remunerated as salvage. When the steam power of the salving vessel is the efficient cause of the salvage, the owners are entitled to the larger share of the reward. This is especially the case where the master and crew of the salving vessel incur no risk to life. But

give such amount as is fit and proper with reference to all the circumstances of the case, including value. Raffin *v.* S S. "Chilka" I. L. R., 7 Bom., 196

4. ——— **Calculation of salvage award**—*Steamers.*—The Court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service; and also the degree of danger

to render services in such cases. In the matter of the "Lady Jocelyn" . . 2 Mad., 355

5. ——— *Goods put on flat*

rendered. Urna Churn Chetty *v.* Gordon
[1 Hyde, 212

6. ——— *Arrest—Excessive bail—Costs—Salvage services—Amount of award increased on appeal.*—In an action of salvage in which a ship was arrested, and the bail asked for was found to be excessive, the Court (Pigot and Trevelyan, JJ.) held that the promovents must pay the impugnants the costs occasioned by the bail required being excessive. *George Gordon, L. R., 9 P. D., 461,* followed. In this case the Court increased the amount of salvage award from £1,500 to £2,400, in consideration of the great risk incurred

SALVAGE—*continued.*

by the salvors in rescuing the ship and cargo, which were very valuable, from imminent destruction. IN THE MATTER OF THE SHIP "CHAMPION"

[I. L. R., 17 Calc., 84

7. ———— *Amount of salvage awarded—Mode of estimating salvage services—Allocation of salvage amongst officers and crew—Bail—Costs.*—On the 13th August 1898 the S.S. *Cashmere*, being (as found by the Court) in a position of risk and hazard, which by a change in the weather might have at once become one of danger, was in need of assistance which the *Naseri* afforded her. The services, however, rendered by the *Naseri* were not of an extraordinary or protracted character. The owners of the *Naseri* sued claiming R1,00,000 for salvage services, and the master and crew of the *Naseri* filed a second suit claiming R50,000. The defendant ship paid into Court R5,000 for the owners of the *Naseri* in the first suit and R2,257 for the crew in the second suit. The value of the S.S. *Cashmere* was R78,000, and that of the cargo on board was R56,510 *Held* that the amount paid into Court by the defendant ship

[I. L. R., 24 Bom., 55

8. ———— *Service to a vessel in distress, though not in imminent danger—Interruption of service by accident—Towage service convertible into salvage service—Distinction between towage and salvage service—The indicia of salvage service—Costs—Practice of the Court in giving costs.*—Any service rendered to a vessel in a state of peril or risk or otherwise in distress, which contributes in some degree to its ultimate safety, entitles the person rendering the service to salvage reward It is not necessary that the distress should be actual or immediate, or that the danger should be imminent and absolute. It will be sufficient if, at the

An ordinary towage service may, in consequence of supervenient danger, be converted into salvage service; but the right to salvage may be wholly or partially forfeited by improper abandonment or by wilful misconduct or gross negligence on the part of the salvors. The mere fact that the service was interrupted by accident or some like cause, if it has been productive of benefit to the owners of the vessels, will

SALVAGE—*concluded.*

not disentitle the salvors from their reward. In assessing the award the Court will take into consideration, not only the danger and difficulties to which the salvor was exposed, but also the skill with which the work was performed. The shortness of service

given on the ordinary scale provided for in the rules under the Civil Procedure Code, and not under the schedule relating to Vice-Admiralty actions IN THE MATTER OF THE STEAMSHIP "DRACHENFELS." "RETRIEVER" v. "DRACHENFELS" "HUGHLI" v. "DRACHENFELS" . I L. R., 27 Calc., 860

SALVATION ARMY.

———— Obstruction of street by—

See MADRAS POLICE ACT, 1888, s 71.

[I. L. R., 14 Mad., 223

SANAD.

See GRANT—CONSTRUCTION OF GRANTS.

[I L. R., 9 Bom., 561
[I. L. R, 12 Bom, 80, 534, 595
I. L. R., 15 Bom, 222, 625
L. R, 18 I. A, 22

See HEREDITARY OFFICE.

[I. L. R., 16 Bom., 374
L. R., 19 I. A., 39

See OUDH ESTATES ACT, 1869.

[I. L. R., 17 Calc., 311, 444
L. R, 16 I A, 183
L. R., 17 I. A., 54
I. L. R., 26 Calc, 81, 879

See OWNERSHIP, PRESUMPTION OF.

[I. L. R, 15 Mad., 101
L. R., 18 I. A., 149

See SERVICE TENURE.

[I. L. R, 14 Bom, 82

See SETTLEMENT—CONSTRUCTION.

[I. L. R., 17 Bom., 40

See SETTLEMENT—EXPIRATION OF SETTLEMENT . . I L. R., 4 Bom., 367

———— Endorsement on—

See REGISTRATION ACT, s 17, CL (*b*).

[I. L. R., 14 Bom., 472

———— for collection of rents by gomashta.

See STAMP ACT, 1862, SCH A. CL. 43

[1 B. L. R., F. B., 65

———— Grant of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 17 Mad., 334

[L. R., 21 I. A., 93

SANAD—*continued.*

——— Production of—

See BOMBAY DISTRICT MUNICIPAL ACT. 1873, s. 33 . I. L. R., 15 Bom., 516

——— Title under—

See OUDH ESTATES ACT, 1869. [I. L. R., 3 Calc., 645

1. ——— Construction of sanad—*Mokurari—Semble*—The word "mokurari" in a sanad does not necessarily import perpetuity. GOVERNMENT OF BENGAL v. JAFUR HOSSEIN KHAN [5 Moore's I. A., 467

2. ——— *Istemrar sanad, Effect of.*—The effect of the istemrar sanad is to ascertain and limit the demand of the Government for

3. ——— *Right to cut timber—Prescriptive title—Construction of grant*—In construing grants by former Governments, the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India. Where a sanad contained only the words "The village of Manavali has been conferred on you as inam, to be enjoyed by you, your son, and grandson The Government dues of the village,—*viz.*, the koolbale koollkunoo (*i e.*, all taxes and assessments), present taxes and future taxes, together with the house-tax, but exclusive of haks due to hakdars, shall continue to be debited from year to year, from the year next succeeding,"—it was held that the plaintiff's sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing

4. ——— *Grant of village*

grant contains an exception or reservation of such

DESAI HIMATSINGJI JORAVARSINGJI v. BHAVABHAI KAYABHAI . . I. L. R., 4 Bom., 643

5. ——— *Grant by Government—Property in the soil.*—A sanad by the State purporting to grant a village in inam, "including the waters, the trees, the stones and quarries,

SANAD—*continued.*

nothing but land revenue. The saving of the rights of the hakdars and inamdars does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee. RAVJI NARAYAN MANDLIK v. DADAJI BAPUJI [I. L. R., 1 Bom., 523

6. ——— *Office of bhoonyee in Cuttack—Jagirdari right.*—Plaintiff's ancestor held certain lands from Government under a settlement at a fixed rent of R10-13-0, but was subsequently appointed bhoonyee with a remuneration of R6-8, recoverable by deduction from the rent, leaving only 6 annas and 4 pies payable to Government by way of rent. *Held* that the sanad of appointment to the office of bhoonyee created no jagirdari right, but that, on the contrary, the reservation of the rent of 6 annas 4 pies seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant CHOITUN MOHANTEE v. BHIKAREE MOHANTEE . . 17 W. R., 410

7. ——— *Nature of estate assigned—Prohibition of alienation.*—The zamindar in possession by a sanad conveyed to *A* as the head of a branch of the grantor's family an estate, part of the zamindari, in lieu of maintenance to which *A*

created a trust), that *A* took an absolute estate in

8. ——— S C, a Hindu,

with all rights appertaining thereto, at a tankhi jumma of R301. Being in possession of the lands

SANAD—*continued*

H C, as heir of his father, *S C*, took possession of the talukh, whereupon *C* and *C L*, claiming under the will of *K*, sued for possession. *Held* by the Court of

plaintiffs were entitled to maintain the action. *Held*

suit must be dismissed. The term "santan" bears the wider and more general meaning of issue, and is not confined to male progeny The true meaning of the words "srem kreme" in a sanad, as gathered from the context, was held to be in "succession" in the sense of succession first of the mother, and then of the children born of her womb *Held* by the Judicial Committee of the Privy Council that the earlier words of the sanad, when read together, were to be

as that event had not occurred, it followed that *K* took an estate which she could dispose of by will, and consequently that the plaintiffs were entitled to succeed in their suit BHOOBUN MOHINI DEBIA *v* HURRISH CHUNDER CHOWDHRY

[I. L. R., 4 Calc , 23 : 3 C L. R., 339
L. R., 5 I. A., 138

9. ——— *Grant of Oudh talukh to Hindu widow and her heirs—Oudh Estates Act (I of 1869), ss 3, 4, 8, and s 22, cl. 11—Separate property of Hindu widow, Descent of.*—A sanad of a taluk in Oudh which had been previously confiscated by Government was granted with full

SANAD—*continued.*

trolled in any way by ss. 3 and 4 thereof *Held* further that under cl. 11 of s 22 the above talukh, which was the separate property of the widow, descended, in the absence of a proved custom of her tribe to the contrary, to her daughter in preference to the son of the daughter of a rival widow and the remote male heirs of her husband BRIJ INDAR BAHADUR SINGH *v* JANKEE KOER. LAL SHUNKER BUX *v*. JANKEE KOER. LAL SEETLA BUX *v*. JANKEE KOER

[L. R., 5 I. A., 1 : 1 C. L. R., 318

10. ——— *Impartibility of zamindari—Partition—Succession by widow.*—The owner of an impartible zamindari, which, though

an infant grandson, *A*, by his eldest son, who had predeceased him During the minority of that grandson the four surviving sons executed a sanad which, after reciting certain arrangements made by their father, directed that "the zamindari should be held by *A*, the son of the eldest son. *A* and we four also shall take in equal shares the inam lands Until *A* attains his proper age, we all should jointly manage the affairs of the said zamindari After *A* attains his

that the sanad amounted to an agreement by which the joint family was divided, and that on the death of *C* his widow was entitled to the zamindari. *Periasami* v *Periasami, L. R., 5 I. A, 61,* cited. VADREVU RANGANAYA KAMMA *v* VADREVU BULLI RAMAIYA . . 5 C. L. R., 439

11. ——— *Impartibility—"Heirs"*- In 1793 the ancient zamindari of Nuzvid,

for arrears of revenue In 1802 the Government formed two zamindaris out of it, and granted one of them, since called Nuzvid, to the second son of the

in the sanad construed to mean heirs of the grantee according to the ordinary rules of inheritance of the Hindu law The Hansapur case, *Beer Pertab Sahee v Rajender Pertab Sahee, 12 Moore's I A., 1,* distinguished. VENKATA RAO *v* COURT OF WARDS

[I. L. R., 2 Mad., 128

SANAD—*continued.*

S. C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW . . . 6 C. L. R., 153

S. C VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS . L. R., 7 I. A., 38

Wards, I L R., 2 Mad., 128 (determining that the Nuzvid zamindari could not be identified with any estate existing before the sanad of 1802 put it on the same footing with ordinary zamindaris), distinguished. Reference made to *Beer Pertab Sahee v Rajender Pertab Sahee, 12 Moore's I A., 1*, as an authority for holding that a mode of acquisition which constitutes property as "self-acquired" in the hands of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition different from those applicable to ancestral property, does not thereby destroy its character of impartibility MUTTU VADUGANADHA TEVAR *v* DORASINGHA TEVAR [I. L. R., 3 Mad., 290
L. R., 8 I. A., 99

Government, its laws and regulations, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns at the permanent

SANGILI VIRA PANDIA CHINNA TAMBIAR
[I. L. R., 3 Mad., 370

14. ———————— *Rent-free sanad —Purchaser at Government sale— Confirmation issued by Government.*—In 1775 a rent-free sanad was granted to *M* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the raiyats. *M* died and a fresh sanad was, in 1786, granted to *K* and *R*, they being thought to be his heirs; but in 1807, *M*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K* and *R*, reciting the circumstances. The zamindari in which these lands were situated was

SANAD—*concluded.*

new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation. LOPEZ *v.* MADDAN THAKOOR . . . 5 B. L. R., 521

S. C. LOPEZ *v.* MUDDUN MOHUN THAKOOR
[13 Moore's I. A., 467: 14 W. R., P. C., 11

15. ———— Proof of lost sanad—*Mirasidars—Proof of title—Evidence—Long possession.*—Mirasidars who had sanads, but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means. BABAJI *v.* NARAYAN
[I. L. R., 3 Bom., 340

16. ———————— *Evidence—Beng. Reg. II of 1819, s. 28—Beng Reg. XIV of 1825, s. 3—Title.*—Where an alleged original sanad was lost, the Judicial Committee, in view of the strict nature of the proof required in cases of claim under

L. R., I. A., Sup. Vol., 10

SANCTION.

———— of Board of Revenue.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, s 32 I. L. R., 2 Bom., 110

See PARTITION—FORM OF PARTITION.
[2 N. W., 28

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135; 13 W. R., 381

———— of Court.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[16 W. R., P. C., 22
I. L. R., 3 Mad., 103
I. L. R., 9 Calc., 810
I. L. R., 13 Bom., 137
I. L. R., 15 Bom., 594
I. L. R., 21 Mad., 91
I. L. R., 22 Mad., 378, 538

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.
[I. L. R., 6 Calc., 687

SANCTION—*concluded.*

——— to proceedings in lunacy.

See LUNATIC . 8 B. L. R., Ap., 50

——— to sue.

See COURT OF WARDS ACT (BENGAL ACT IX OF 1879), s. 55
[I. L. R., 16 Calc., 89
I. L. R., 17 Calc., 688
L. R., 17 I. A., 5
I. L. R., 27 Calc., 242

See NAWAB OF SURAT . 12 Bom., 156
[I. L. R., 12 Bom., 496

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

SANCTION FOR PROSECUTION.

See ACT XXVII OF 1870.
[6 B. L. R., Ap., 98
15 W. R., Cr., 2

See CRIMINAL PROCEDURE CODES, s. 197 (1872, s. 466) I. L. R., 2 Bom., 481

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R., 7 Mad., 314

See LIMITATION ACT, 1877, ART. 178
[I. L. R., 10 All., 350

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.
[I. L. R., 16 Mad., 461

See MALICIOUS PROSECUTION.
[I. L. R., 9 All., 59

See PROBATE AND ADMINISTRATION ACT, 18 . . 2 C. W. N., 597

SANCTION FOR PROSECUTION—*continued.*

See REGISTRATION ACT, 1877, s. 83 (1866, s. 95).
[4 B. L. R., Ap., 69: 13 W. R., Cr., 21

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 20 Calc., 349

See SESSIONS JUDGE, JURISDICTION OF
[I. L. R., 16 Calc., 766

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s. 622
[I. L. R., 3 All., 508

——— Application for—

See PRACTICE—CRIMINAL CASES—APPROVERS . I. L. R., 24 Calc., 492

——— Order for—

See APPEAL IN CRIMINAL CASES—ACT—PRESIDENCY MAGISTRATES ACT.
[I. L. R., 2 Calc., 466

See LETTERS PATENT, HIGH COURT, cl. 15
[I. L. R., 17 Mad., 105

——— Order granting or refusing—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
[I. L. R., 15 All., 61

1. APPLICATION FOR, AND GRANT OF, SANCTION.

1. ——— Court to which application should be made—*Criminal Procedure Code, 1869, s. 169.*—An application under s. 169 of the Criminal Procedure Code praying for sanction to institute a prosecution on a charge of perjury should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed. IN THE MATTER OF THE PETITION OF RAJAH OF VENKATAGIRI . . 6 Mad., 92

IN THE MATTER OF THE PETITION OF SHEEPPERSHAD CHUCKERBUTTY . 17 W. R., Cr., 46

2. ——— *Change of incumbents of office of Subordinate Magistrate*—A Subor- [illegible]

[7 Mad., Ap., 12

SANCTION FOR PROSECUTION —*continued.*

1. APPLICATION FOR, AND GRANT OF, SANCTION—*continued.*

3. ———— Initiation of case needing sanction—*Initiation by party and by Court—Criminal Procedure Code, 1861, ss 170, 171.*—In a case under s. 170, Criminal Procedure Code, 1861, the initiative was taken by the party interested, and the Court took no part in the matter except in the way of giving or refusing its sanction. S. 170 contemplated cases in which the Court itself took the initiative, but it was not intended that the Court

4. ——— *Initiation by Court —Criminal Procedure Code, 1872, s. 468—False charge—Penal Code, s 211*—There being nothing

and found to be false by a Magistrate subordinate to him. JUGUT MOHINI DASSI *v* MADHU SUDHAN DUTT . . . 10 C. L R., 4

5. ———— *Initiation by Court—Criminal Procedure Code, 1872, ss. 470,*

6. ———— Effect of grant of sanction—*Criminal Procedure Code (Act X of 1882), ss. 195 and 478—Civil Court's power to proceed under s. 578 after sanction given to a private person—Dismissal of a complaint by a private person, Effect of.*—The granting of sanction to a private

to a proceeding under that section. QUEEN-EMPRESS *v.* SHANKAR . . I. L. R., 13 Bom., 384

7. ———— Practice in granting sanction —*Criminal Procedure Code (Act X of 1882), s. 195—Revisional power, Exercise of, by High Court* —When subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the

theft of doors and windows is not proved at all against the accused. They are acquitted." There

SANCTION FOR PROSECUTION —*continued.*

1. APPLICATION FOR, AND GRANT OF, SANCTION—*concluded.*

was no further record of the proceedings On an application to the High Court to revoke the sanction, —*Held* that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal

CHUNDER CHUCKERBUTTY I. L. R., 16 Calc., 661

2. WHERE SANCTION IS NECESSARY OR OTHERWISE.

8. ———— Prosecution of Municipal Corporation—*Presidency Magistrates' Act (IV of 1877), s. 39—Public servant.*—A Municipal Corporation was not a public servant within the meaning of s 39 of Act IV of 1877, and might therefore be prosecuted under the Penal Code without the preliminary sanction of the Government required by *that section.* EMPRESS *v.* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA

[I. L. R., 3 Calc., 758: 2 C. L. R., 520

9 ———— Prosecution of Judge—*Sanction of Government—Criminal Procedure Code, 1861, s 167*—The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as Judge. Construction of s 167 of the Criminal Procedure Code, 1861. ANONYMOUS . . . 6 Mad., Ap., 22

10. ———— *Criminal Procedure Code, 1882, s. 197—Sanction to prosecute Judge for words uttered on the bench.*—Where a

without sanction. IN RE GULAM MUHAMMAD SHARIF-UD-DAULAH . I. L. R., 9 Mad., 439

11. ———— *Sanction to*

Chief

197 of

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s 197 of the Code is necessary, unless the Judge or public servant commits an offence in his judicial or official capacity. *Reg.* v. *Parshram Keshav, 7 Bom. H. C., Cr., 61; Imperatrix* v. *Lakshman Sakharam, I. L. R., 2 Bom., 481;* and *In re Sreemanto Chatterjee, unreported,* approved of. *In re Ghulam Muhammad, I. L. R., 9 Mad., 439,* dissented from. NANDO LAL BASAK *v.* MITTER .

[I. L. R., 26 Calc., 869
3 C. W. N., 539

SANCTION FOR PROSECUTION —*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

13. ——— Criminal Procedure Code (1882), s 195—*Abetment of offence—Penal Code, s 109.*—Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in s. 195, Criminal Procedure Code, no such

14. ——— Offence under s. 182, Penal Code—*Charge and conviction under different*

he subsequently framed a charge against *B* under s. 182, Penal Code, and punished him under that section. *Held* with reference to s 168, Code of *Criminal Procedure, that the offences under ss.* 182 and 211, Penal Code, being offences under Ch. XIV of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under s 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of *B*. RAJ COOMAR *v.* KIRTHU OJHA

[13 W. R., Cr., 67

15. ——— *Prosecution by private person—Criminal Procedure Code (1882), s. 195.*—A prosecution under s. 182 of the Penal

16. ——— Criminal Procedure Code (Act X of 1882), s. 195—*Presidency Magistrate, Jurisdiction of—Penal Code (Act XLV of 1860), ss 116, 193—Abetment—Instigating person to give*

divorce suit

CHANDRA MOHAN BANERJEE *v.* BALFOUR

[I. L. R., 26 Calc., 359

SANCTION FOR PROSECUTION —*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

17. ——— *Offence under Penal Code (Act XLV of 1860), s. 193—Giving*

relation to any proceeding pending in any Court, but in the course of an investigation by the police into the matter of information received by them. *Chandra Mohan Banerjee v. Balfour, I. L. R., 26 Calc., 359,* distinguished JAGAT CHANDRA MOZUMDAR *v.* QUEEN-EMPRESS I. L. R., 26 Calc., 786

[3 C. W. N., 491

18. ——— —Charge under s. 82 of Registration Act (III of 1877)—It is not necessary that sanction should be given before instituting a charge under s 82 of the Registration Act GOPI NATH *v.* KULDIP SINGH I. L. R., 11 Calc., 566

19. ——— Criminal Procedure Code, s. 195—*Registration Act, s 41—Sanction of Registrar—Condition precedent to trial for forgery of will registered.*—A Sub-Registrar acting under s. 41 of the Registration Act, 1877, is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure. His sanction therefore was held to be

20. ——— *Police officer acting under s. 161—Prosecution for giving false evidence to a police officer.*—A police constable taking down a statement under s. 161 of the Criminal Procedure Code is not a Judge, nor is the place where he officiates a Court. His sanction is therefore not necessary under s 195 of the Criminal Procedure Code, to a prosecution for a false statement made to him, whether the charge be framed singly or alternatively. QUEEN-EMPRESS *v.* ISMAL VALAD FATARU

[I. L. R., 11 Bom., 659

21. ——— *Registration Act (III of 1877), s. 34—Forged document registered by Sub-Registrar.*—A Sub-Registrar acting under s. 34 of the Registration Act, 1877, is not a "Court" within the meaning of s. 195 of the Code of Criminal Procedure QUEEN-EMPRESS *v.* SUBBA

[I. L. R., 11 Mad., 3

22. ——— *Registration Act, 1877, ss. 82, 83.*—Certain persons were charged with

SANCTION FOR PROSECUTION
—continued.

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

that no sanction was necessary as to the charge of forgery, and that the provisions of s. 195 of the Code of Criminal Procedure were not applicable. QUEEN-EMPRESS *v.* VYTHILINGA I. L. R., 11 Mad., 500

23. ———— *Sub-Registrar—Forgery—Penal Code (Act XLV of 1860), ss. 463, 467—Court—Judicial inquiry—Administrative in-*

[illegible]

(Act XLV of 1860); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X of 1882), so as to embrace all species of forgery, and thus includes a case falling under s 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope Distinction between a judicial and an administrative inquiry pointed out. QUEEN-EMPRESS *v* TULJA

[I. L. R., 12 Bom., 36

24.———— *Registration Act (III of 1877), ss. 34, 35, 41—Forged document registered by Sub-Registrar.*—A mortgagor was

[illegible]

Mad, 154, and *Queen-Empress v Subba, I. L. R., 11 Mad, 3*, explained. QUEEN-EMPRESS *v.* SOBHANADRI . . I. L. R., 12 Mad., 201

25.———— *Registration Act (III of 1877), ss. 72, 75—"Court"—Sanction for prosecution for perjury.*—A Registrar acting under the Registration Act, ss. 72—75, is a Court for the purposes of the Criminal Procedure Code, s. 195, and his sanction is therefore necessary for a prosecution for perjury committed in respect of the representation of a document to him for registration. ATCHAYYA *v.* GANGAYYA . I. L. R., 15 Mad., 138

26. ———— *Registrar—"Court"—Registration Act, 1877, s 73.*—A Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchayya v. Gangayya, I. L. R., 15 Mad, 138*, dissented from. QUEEN-EMPRESS *v.* RAM LAL

[I. L. R., 15 All., 141

27. ———— *"Court"—Collector—Appraisement proceedings—Bengal Tenancy Act (VIII of 1885), ss. 69, 70*—The word "Court" used in s. 195 of the Criminal Procedure Code, without the previous sanction of which offences therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words "Court of Justice" as defined in s. 20 of the Penal Code It includes a tribunal empowered to deal with a particular matter, and authorized to receive evidence bearing on that matter, in order to enable it to arrive at a determination. A Collector acting in appraisement proceedings under ss. 69 and 70 of the Bengal Tenancy Act is a Court within the meaning of the term as there used. Where therefore

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lector having been granted RAGHOOBUNS SAHOY *v.* KOKIL SINGH *alias* GOPAL SINGH

[I. L. R., 17 Calc., 872

28. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Complaint made to police—Penal Code (Act XLV of 1860), s 211—Prosecution for laying false charge.*—A complaint made before the police and judicially declared to be false is not an offence "committed in, or in relation to, any proceeding in any Court," within the meaning of sub-s. (b) of s. 195 of the Criminal Procedure Code (Act X of 1882); and no sanction is therefore necessary for the prosecution of the complainant under s 211 of the Penal Code. PUTIRAM RUIDAS *v.* MAHOMED KASEM

[3 C. W. N., 33

29. ———— **Prosecution for false charge in complaint made at police station**—*Criminal Procedure Code, 1872, s. 468.*—A complaint made at a police station is not made before any Civil or Criminal Court, and, if it proved false, prosecution for it did not require the sanction of any Court under s. 468, Code of Criminal Procedure. GOVERNMENT OF BENGAL *v.* GOKOOL CHUNDER CHOWDRY . . . . 24 W. R., Cr., 41

RAM RUNJUN BHANDARI MADHUB GHOSE

[25 W. R., Cr., 33

30. ———— **Giving false evidence before a police patel**—*Criminal Procedure Code, 1872, ss. 467, 468—Bom. Act VIII of 1867 (Village Police), s. 13—Penal Code (Act XLV of 1860),*

[illegible]

SANCTION FOR PROSECUTION *—continued*

2 WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

without a sanction (*See* s. 467 of the Code of Criminal Procedure) IMPERATRIX *v.* IRBASAPA [I. L. R., 4 Bom., 479

31. ——— **Prosecution of police patel** [illegible]

him in his official capacity as such, needs no previous sanction. The provisions of the Bombay Village Police Act (VIII of 1867), s. 9, as amended by the Bombay Police Amendment Act (I of 1876), render a police patel removeable from his office without the previous sanction of Government, and therefore s. 466 of the Criminal Procedure Code (Act X of 1872) did not apply. IMPERATRIX *v.* BHAGWAN DEVRAJ [I. L. R., 4 Bom., 357

32. ——— **Prosecution on alternative** [illegible]

33. ——— *Accused to whom* [illegible]

34. ——— *Criminal Procedure Code (Act V of 1898), s. 339—Tender of pardon—Trial of person who, having accepted a pardon, has not fulfilled the conditions on which it was offered—Prosecution for giving false evidence—Sanction of High Court.*—No prosecution for the offence of giving false evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court, as provided by s. 339, cl. (3), of the Code. QUEEN-EMPRESS *v.* NATU [I. L. R., 27 Calc., 137

35. ——— **Charge of forgery**—*Forged document used in civil case—Power of Deputy Magistrate—Criminal Procedure Code, 1861, ss. 169, 170.*—A Deputy Magistrate could not commit a person for forgery under s. 170 of the Code of Criminal Procedure, when the Civil Court had sanctioned the prisoner's committal under s. 169, unless with the express sanction of that Court. QUEEN *v.* DWARKANATH BOSE . . . . . 2 W. R., Cr., 31

SANCTION FOR PROSECUTION *—continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

36. ——— *Forged document used in civil case—Power of Magistrate—Criminal Procedure Code, 1861, s 170.*—S 170, Code of Criminal Procedure, referred only to cases where a forged document had been put in evidence in a Civil [illegible]

37. ——— *Criminal Procedure Code, 1872, s. 469—Prosecution of witness for forgery*—The sanction required by s 469 of the Criminal Procedure Code as a condition precedent to the prosecution of a party to a civil suit for forgery of a [illegible] neces [illegible] witne [illegible] forge [illegible] suit EADARA VIRANA *v* QUEEN [I L. R., 3 Mad., 400

38. ——— **Offence before or against Mamlatdar's Court**—*Code of Criminal Procedure (Act X of 1872), s 468.*—The Mamlatdar's Court constituted by Bombay Act III of 1876 was a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure; therefore a complaint of an [illegible]

39. [illegible]

Collector to make an inquiry into the matter, with a view to taking action under s. 32 of the Bombay Land Revenue Code. The Assistant Collector found on inquiry that the charge of bribery was unfounded, and gave a sanction to prosecute the [illegible]

40. ——— **Charge against Village Magistrate for alleged offence while acting not in a judicial capacity**—*Criminal Procedure Code (1898), s. 197—Mad. Reg. XI*

SANCTION FOR PROSECUTION —*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*concluded.*

of 1816—Penal Code, s. 19—Judge.—A Village

sanction of the Government or other authority mentioned in s. 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained The Sub-Magistrate held that such sanction was unnecessary, and kept the case on his file and commenced to

necessary under s. 197 of the Code of Criminal Procedure. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge or a public servant not removeable from office without the sanction of Government, and therefore the sanction referred to had no application *Held* also that the order of the District Magistrate

CHETTI *v.* SOLI GOUNDAN [I. L. R., 23 Mad., 540

3. WHEN SANCTION MAY BE GRANTED.

41. ——— Sanction previous to prosecution—*Jurisdiction of tribunal without sanction—Illegal conviction—Criminal Procedure Code, 1861, s. 167.*—S. 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such

bad. REG. *v.* PARSHRAM KESHAV 7 Bom, Cr., 61

See QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY [7 B. L. R., 28: 15 W. R., Cr., 45

42. ——— Prosecution for perjury—*Sanction after order for committal to sessions.*—Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. QUEEN *v.* GOLAB SINGH [3 B. L. R., A. Cr., 10

"CODE" USEEKHRAJ

Code, without 132: Agra, F. B., Ed. 1874, 206

SANCTION FOR PROSECUTION —*continued.*

3. WHEN SANCTION MAY BE GRANTED —*concluded.*

43 ——— Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169—"At any time."*—The words "such sanction may be given at any time" in s. 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO *v.* SHEWGOLAM SAHOO . . 18 W. R., Cr., 62

44. ——— *Sanction after trial and conviction—Criminal Procedure Code, 1872, s. 470.*—Under the words "at any time" in s. 470 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. EMPRESS OF INDIA *v.* SABSUKH . . . I. L. R., 2 All., 533

45. ——— *Charge of false evidence on alternative statements after tender of*

granted before, and not after, the commencement of the prosecution. QUEEN-EMPRESS *v.* DALA JIVA [I. L. R., 10 Bom., 190

4 NOTICE OF SANCTION.

46. ——— Necessity of notice—*Criminal Procedure Code (Act X of 1882), s. 195, cl. c, para. 2.*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless

47. ——— *Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused.*—*Held* by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. IN THE MATTER OF THE PETITION OF KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA [I. L. R., 12 Calc., 58

MANGAR RAM *v.* BEHARI I. L. R., 18 All., 358

48. ——— *Criminal Procedure Code, s. 195—Notice to accused.*—A conviction for

only by

sanctioned

accused.

is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment

SANCTION FOR PROSECUTION
—*continued.*

4. NOTICE OF SANCTION—*concluded.*

[illegible] ...hich the ... upon a ... evidence ... In cases, however, in which the Magistrate examines the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given. QUEEN-EMPRESS *v.* BEARI [I. L. R., 10 Mad., 232

49. ———— *Criminal Procedure Code, s 195—Omission to give notice of* [illegible]

acquitted" There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code The [illegible]

sanction should not be granted, and asked that [illegible]

cumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard. KEDARNATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY . . I. L. R., 16 Calc., 661

50. ———— *Criminal Procedure Code (Act V of 1898), s. 195—Omission to give accused opportunity to be heard*—Although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is a judicial act, and there may be [illegible]

SASTRI . . . I. L. R., 23 Mad., 210

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

51. ———— Nature of sanction—*Permissive nature of sanction—Discretion of party obtaining sanction—Criminal Procedure Code, 1872, s. 468.*—The sanction to prosecu[illegible] ... plated in

SANCTION FOR PROSECUTION
—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

s. 468 of the Criminal Procedure Code, was not a direction to prosecute, but was a permission granted to a private person to exercise his own unfettered discretion as to whether he would take proceedings or [illegible]

52. ———— *Sanction by High Court to prosecution for perjury—Presumption that proper procedure will be adopted.*—Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge. KEERUT SINGH *v.* NARAIN PASSEE 25 W. R., Cr., 14

53. ———— Form of sanction—*Sanction in writing and attached to record.*—It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. QUEEN *v.* KRISTNA RAU [7 Mad., 58

54. ———— The law does not require the sanction to a prosecution to be given in any particular form of words. QUEEN *v.* LEKHRAJ [2 N. W., 132: Agra, F. B, Ed. 1874, 206

55. ———— *Criminal Procedure Code (1882), s. 195—Form of sanction for prosecution for false evidence—Requisites of a proper sanction.*—A sanction to prosecute for giving [illegible]

AMBAIDAS . . . I. L. R., 19 Bom., 362

56. ———— *Criminal Procedure Code, 1861, ss. 169-170—Statement of particular offences.*—When a Civil Court gives sanction to a prosecution under ss. 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. QUEEN *v.* OOMA MOYEE DEBEA . . . . 13 W. R., Cr., 25

57. ———— *General sanction—Prosecution for false evidence—Penal Code, s. 193.*—A general sanction by a Judge to a prosecution for giving false evidence under s. 193 of the Penal Code and for false verification is not suf[illegible]

Contra, QUEEN *v.* KADIR BUX *alias* KADIR [illegible]MED . . . . 11 W. R., Cr., 17

———— *Prosecution* [illegible] *Criminal Procedure Code, 1872, s. 470—*[illegible] *proper sanction* [illegible] sanction for a pro[illegible] s. 470 of [illegible] Criminal Procedure

SANCTION FOR PROSECUTION —*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*concluded.*

of 1816—Penal Code, s 19—Judge.—A Village

sanction of the Government or other authority mentioned in s. 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-

Procedure. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge or a public servant not removeable from office without the sanction of Government, and therefore the sanction referred to had no application. *Held* also that the order of the District Magistrate

CHETTI *v.* SOLI GOUNDAN [I. L. R., 23 Mad., 540

3. WHEN SANCTION MAY BE GRANTED.

41. ———— Sanction previous to prosecution—*Jurisdiction of tribunal without sanction—Illegal conviction—Criminal Procedure Code, 18*

Procedure

therein m

See QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY [7 B. L. R., 26 : 15 W. R., Cr., 45

42. ———— Prosecution for perjury—*Sanction after order for committal to sessions.*—Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. QUEEN *v.* GOLAB SINGH [3 B. L. R., A. Cr., 10

"COURT" NECKEHRAJ

Code, without 132: Agra, F. B., Ed. 1874, 206

SANCTION FOR PROSECUTION —*continued.*

3. WHEN SANCTION MAY BE GRANTED —*concluded.*

43 ———— Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169—"At any time."*—The words "such sanction may be given at any time" in s 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO *v.* SHEWGOLAM SAHOO . . 18 W. R., Cr., 62

44. ———— *Sanction after trial and conviction—Criminal Procedure Code, 1872, s. 470.*—Under the words "at any time" in s. 470 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. EMPRESS OF INDIA *v.* SAB-SUKH . . . . I. L. R., 2 All., 533

45. ———— *Charge of false evidence on alternative statements after tender of*

4 NOTICE OF SANCTION.

46 ———— Necessity of notice—*Criminal Procedure Code (Act X of 1882), s 195, cl. c, para. 2.*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless

47. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused.*—*Held* by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. IN THE MATTER OF THE PETITION OF KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA [I. L. R., 12 Calc., 58

MANGAR RAM *v.* BEHARI I. L. R., 18 All., 358

48. ———— *Criminal Procedure Code, s. 195—Notice to accused.*—A conviction for preferring a false complaint is not illegal only by reason of the prosecution having been sanctioned without notice previously given to the accused. Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment

SANCTION FOR PROSECUTION —*continued.*

4. NOTICE OF SANCTION—*concluded.*

formed upon legal evidence In cases in which the Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him on which to form his judgment. In cases, however, in which the Magistrate examines the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given QUEEN-EMPRESS *v.* BEARI [I. L. R., 10 Mad., 232

49. ———— *Criminal Procedure Code, s. 195—Omission to give notice of sanction to accused.*—A Magistrate, in disposing of a charge of theft, delivered the following judgment "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications The attorney for the complainant, who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for. On an application to the High Court to revoke the sanction,—*Held* that the Magistrate did not exercise a proper discretion under the circumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard. KEDARNATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY . I. L. R., 16 Calc., 661

50. ———— *Criminal Procedure Code (Act V of 1898), s. 195—Omission to give accused opportunity to be heard.*—Although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is a judicial act, and there may be circumstances—(such as in those cases in which there has been a difference of opinion as to the desirability for granting sanction)—in which a proper discretion cannot be said to have been exercised unless the persons sought to be prosecuted have given an opportunity to be heard. PAMPAPATI SASTRI *v.* SUBBA SASTRI . . . I. L. R., 23 Mad., 210

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

51. ———— Nature of sanction—*Permissive nature of sanction—Discretion of party obtaining sanction—Criminal Procedure Code, 1872, s. 468.*—The sanction to prosecute, contemplated in s. 468 of the Criminal Procedure Code, was not a direction to prosecute, but was a permission granted to a private person to exercise his own unfettered discretion as to whether he would take proceedings or not. IN THE MATTER OF THE PETITION OF GRIDHARI MONDUL. GRIDHARI MONDUL *v.* UCHIT JHA [I. L. R., 8 Calc., 435: 10 C. L. R., 46

52. ———— *Sanction by High Court to prosecution for perjury—Presumption that proper procedure will be adopted.*—Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge. KEERUT SINGH *v.* NARAIN PASSEE . 25 W. R., Cr., 14

53. ———— Form of sanction—*Sanction in writing and attached to record.*—It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. QUEEN *v.* KRISTNA RAU [7 Mad., 58

54. ———— The law does not require the sanction to a prosecution to be given in any particular form of words QUEEN *v.* LEKHRAJ [2 N. W., 132: Agra, F. B., Ed. 1874, 206

55. ———— *Criminal Procedure Code (1882), s 195—Form of sanction for prosecution for false evidence—Requisites of a* [illegible]

AMBAIDAS . I. L. R., 19 Bom., 362

56. ———— *Criminal Procedure Code, 1861, ss. 169-170—Statement of particular offences.*—When a Civil Court gives sanction to a prosecution under ss. 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. QUEEN *v.* OOMA MOYEE DEBEA . . . 13 W. R., Cr., 25

57. ———— *General sanction—Prosecution for false evidence—Penal Code, s. 193.*—A general sanction by a Judge to a prosecution for giving false evidence under s. 193 of the Penal Code, and for false verification, is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. QUEEN *v.* KARTICK CHUNDER HOLDAR . 9 W. R., Cr., 58

Contra, QUEEN *v.* KADIR BUX *alias* KADIR MAHOMED . . . . 11 W. R., Cr., 17

58. ———— *Prosecution under Criminal Procedure Code, 1872, s. 470—Requisites of proper sanction.*—A sanction for a prosecution under s. 470 of the Criminal Procedure

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Code must designate the Court where the false state- [illegible]

[illegible] description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted. IN RE BALAJI SITARAM [11 Bom., 34

59. ——— *Criminal Procedure Code, 1882, s. 195—False evidence—Specification of place and time of offence.*—A sanction to a prosecution for giving false evidence granted under s. 195 of the Criminal Procedure Code should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized. HAR DIAL *v.* DOORGA PRASAD . I. L. R., 6 All., 105

60. ——— *Specification of* [illegible]

61. ——— *Specification of particulars of offence—Criminal Procedure Code, 1882, s 195—False evidence—Preliminary inquiry.*—In a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant [illegible]

his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution. PARSOTAM LAL *v.* BIJAI . . . . I. L. R., 6 All., 101

62. ——— *Omission to specify particulars of offence—False evidence—Criminal Procedure Code (Act XXV of 1861)*

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

ss. 169 and 17[illegible] offences under s [illegible] committed in [illegible] and for which [illegible] Court was necessary under ss 169 and 170 of Act XXV of 1861,—*Held* that the sanction, which simply gave permission, and did *not specify the particular* act or acts and the particular words which constituted the offences, was insufficient. QUEEN *v.* GABIND CHANDRA GHOSE

[7 B. L. R., 28 note: 10 W. R., Cr., 41

63. ——— *Criminal Procedure Code (1882), s 195—Necessary contents of* [illegible]

SINGH . . I. L. R., 18 All., 203

64 ——— *Criminal Procedure Code (Act V of 1898), s 195—Notice to person to prosecute whom sanction is sought—Pro-* [illegible]

properly granted or not. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *primâ facie* case on which a prosecution could be instituted with a fair chance of success, the High Court revoked the sanction. PAMPAPATI SASTRI *v.* SUBBA SASTRI

[I. L. R., 23 Mad., 210

65. ——— *Giving false evidence in a judicial proceeding—Penal Code (Act XLV of 1860), s. 193—Granting sanction to prosecute youthful offenders.*—A sanction to prosecute under the provisions of s. 195 of the Criminal [illegible]

certain persons, one of whom was a boy of eleven years, [illegible]

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

consideration of his youth, and should therefore be revoked. GOBARDHONE CHOWKIDAR v HABIBULLA [3 C. W. N., 35

66. ———— *Refusal of sanction under mistake or as being unnecessary* —*Held* that the declining by a Court of revenue to sanction a prosecution under ss 468 and 169 of Act X of 1872, under a mistaken view of the law and under the impression that sanction was unnecessary, did not constitute sanction EMPRESS OF INDIA v SABSUKH [I. L. R., 2 All., 533

67. *Statement by Collector that he has no objection to give sanction again after sanction by Deputy Collector* —In a suit by *A* for arrears of rent above R100, a decree was passed against *B*, *C*, and *D*, wherein certain documents filed by them were held to be forgeries ...

jection to give it a second time, as the petitioner desires it." *D* was convicted by the Sessions Judge on a charge under s 471 of the Penal Code. On appeal by *D*,—*Held* that no proper leave had been obtained to prosecute *D*, and this defect was not cured by the subsequent proceedings, and the conviction must be quashed. QUEEN v MAHIMA CHANDRA CHUCKPRBUTTY [7 B. L. R., 26: 15 W. R., Cr., 45

68. ———— *Statement by Munsif that he has no objection to give sanction if evidence is thought sufficient—Sufficiency of sanction* —On an application to a Munsif for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against *A*, I have no objection to give such sanction." *Held* that the order was a sufficient sanction to support a prosecution. IN THE MATTER OF JADU NATH HAZRA v ANNODA PROSAD SIRCAR [11 C. L. R., 53

69. ———— *Penal Code,* ...

tion) "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under s 193 of the Penal Code, and that it was not necessary that the authority giving the sanction should specify the particular section of the Penal

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Code under which the accused was permitted to be prosecuted REG v. TAI . 8 Bom., Cr, 24

70. ———— *Issue of warrant —Implied sanction—Criminal Procedure Code, 1861, s. 169* —The object of the sanction required by s 169, Code of Criminal Procedure, was to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court was subordinate. When a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with ...

71. ———— *Instruction from Sessions Judge to Magistrate—Criminal Pro-* ...

tion to a prosecution of such person for such offence, within the meaning of s. 468 of Act X of 1872, that section supposing a complaint, or at least an application for sanction for a complaint EMPRESS v GOBARDHAN DAS . I. L R., 3 All., 62

72. ———— *Criminal Procedure Code (1882), ss. 195 and 476—Nature of sanction—Sanction granted by Court without application being made by the person to whom it is granted.*—A sanction to prosecute under s. 195 of the Code of Criminal Procedure presupposes an application for sanction, and where no such application is ...

73. ———— *Order of Munsif directing that Magistrate inquire into a case—Criminal Procedure Code, 1882, ss 195 and 476—"Sanction"—"Complaint"—Civil Procedure Code, 1882, s 643.*—On the 2nd August 1884 a Munsif, who was of opinion that in the course of a suit which ...

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

inquire into the matter In May 1885, upon an application by one of the accused to the District

the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was not applicable to the case. *Per* PETHERAM, C.J., and STRAIGHT, J.—That considering that s. 643 of the Civil Procedure Code was closely similar to s 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* PETHERAM, C.J., and STRAIGHT, J.—The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge were obliged to appear before a Magistrate and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s 195 ISHRI PRASAD *v.* SHAM LAL **I. L. R., 7 All., 871**

74. ———— *Report of police or medical officers—Prosecution under Bombay Military Cantonments Act, III of 1867.*—Reports of police or medical officers are not a sufficient sanction for prosecutions under this Act. A complaint on oath or solemn affirmation is necessary. REG. *v.* LADU **[7 Bom., Cr., 87**

75. ———— *Implied sanction—Criminal Procedure Code, 1869, s 168—Penal Code, ss. 177, 193—Framing charge.*—The form of an accusation by a District Superintendent of Police, under s. 193 of the Penal Code, does not preclude a Magistrate from framing the charge under s 177; the sanction of the District Superintendent required under s. 168, Code of Criminal Procedure, to give the Magistrate jurisdiction, need not be express, but might be implied. IN THE MATTER OF ASHRUFF HOSSEIN **[16 W. R., Cr., 67**

76. ———— *Implied sanction—Criminal Procedure Code, 1861, s 169.*—Where the Magistrate before whom a witness gave false evidence himself committed such a witness for trial, his sanction of the prosecution, under s. 169 of the Criminal Procedure Code, was held to be implied. REG. *v.* MUHAMMAD KHAN VALAD IMAM KHAN **[6 Bom., Cr., 54**

77. ———— *Implied sanction—Prosecution for non-attendance in obedience to summons—Criminal Procedure Code, 1861, s. 169.*—Prosecution for non-attendance in obedience to a summons was entertained without the sanction required by s. 168 of the Criminal Procedure Code. *Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt. REG. *v.* GANU BIN TATIA SELAR . . . **5 Bom, Cr., 38**

78. ———— *Implied sanction—Direction to commit.*—When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. QUEEN *v.* LEKHRAJ **[2 N. W., 132; Agra, F. B., Ed. 1874, 206**

79. ———— *Letter from Civil Court to Subordinate Magistrate—Specification of sections of Penal Code for which sanction is given*

ss 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing

of charg

held th.

commit

head of charge. REG *v.* SUBI SANI **[8 Bom., Cr., 28**

80. ———— *Suggestion that*

81. ———— *Criminal Procedure Code, s 197—Prosecution of public servants*

82. ———— *Criminal Procedure Code, ss 195, 476—Preliminary inquiry—Penal Code (Act XLV of 1860), s. 182—Criminal Procedure Code (Act X of 1872), s. 471.*—Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, from

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

reasons stated in his judgment, to be false,—*Held*, taking the order to have been one made under s 195 of the Code of Criminal Procedure, that it was a [illegible] a con- [illegible] *Semble* [illegible] under [illegible] it was not necessary for the validity of an order under that section that there should be any evidence on the [illegible]

[illegible] *Lall Ghose, I. L R, 6 Calc, 308, Queen* v *Bajoo Lall, I. L. R, 1 Calc., 450*, and *Khepu Nath Sikdar* v. *Girish Chunder Mukerjee, I L R, 16 Calc, 370*, referred to and distinguished BAPERAM SURMA v. GOURI NATH DUTT [I. L R., 20 Calc, 474

83. ———— *Criminal Procedure Code, ss. 476, 195—Sanction by Magistrate for prosecution—Preliminary inquiry*—When a Magistrate takes action under s 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma* v *Gouri Nath Dutt, I. L. R., 20 Calc, 474*, followed QUEEN-EMPRESS v MATABADAL I. L R., 15 All., 392

84. — *Criminal Procedure Code, 1898, ss. 195, 476—Sanction for prosecution for false statement made in proceedings under Land Acquisition Act (I of 1894)*—Sanction under s 195 of the Code of Criminal Procedure [illegible]

85. ———— Sufficiency of sanction—*Sanction of official superior—Penal Code, s 182—Criminal Procedure Code, 1861, s. 168.*—Where a [illegible]

See IN THE MATTER OF THE PETITION OF ABDOOL LUTEEF . . . . . 9 W. R., Cr., 31

86. — — ——— *Sanction of official superior—Criminal Procedure Code, 1861, s. 169—Judicial Commissioner sitting as Sessions Judge.*—Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the Chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debroghur, before or against which the offence was committed, was subordinate,—*Held* that the sanction required by s. 169, Code of Criminal Procedure, had been given. BAPOORAM AHAM v. GUNGARAM KACHAREE [17 W. R., Cr., 54

87. — *Sanction mentioned* [illegible]

The prisoner was tried for and convicted of an offence coming under the provisions of s. 169 of the Criminal Procedure Code. *Held* that the mention of s. 170 in [illegible]

88. ——— — — *Sanction by official superior—District Superintendent of Police—"Inferior ministerial officer"—Criminal Procedure Code, 1861, s 168*—The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, was held to be no sufficient sanction under s 168 of the Criminal Procedure Code, 1861. The words "inferior ministerial officer" referred to public servants of a lower grade than an Assistant Superintendent of Police. QUEEN v OOTUM CHUND [2 N W., 287

89. ——— ——— *Criminal Procedure Code, 1861, s 168—Person charged with giving false information under Penal Code, s 182.*—Where a person was accused under s 182 of the Penal Code with having given false information to a head constable, it was held that the provisions of [illegible] charge of the District Superintendent's office," the District Superintendent being the official superior of the head constable. QUEEN v. GRISH CHUNDER SIRKAR . . . . 19 W. R., Cr., 33

90. — — — — — *Sanction given by Judge who afterwards tried the case—Criminal Procedure Code, 1872, s. 469.*—The Court declined in this case to say under s. 469 of the Code of Criminal Procedure, 1872, that a conviction was bad, because the Judge who tried the case and the Judge who sanctioned the criminal proceedings was the same person. QUEEN v. SURAL CHUNDER GANGOOLY [23 W. R., Cr., 16

SANCTION FOR PROSECUTION —*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*concluded.*

91. ———————— *Notice to show cause not a necessary preliminary—Criminal Procedure Code (1882), s. 195.*—An order under s. 195 of the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanund Das v. Hari Bera, I. L. R., 12 Calc., 58,* followed. MANGAR RAM *v.* BEHARI

[I. L. R., 18 All., 358

92. ———————— *Criminal Procedure Code (Act X of 1882), ss. 196, 532—Charge under Penal Code (Act XLV of 1860), s. 124A.* —The accused, who was the editor, proprietor, and publisher of the *Kesari* newspaper, was charged

articles appearing in the said newspaper, under

6. POWER TO GRANT SANCTION.

93. ———— **Implied power**—*Criminal Procedure Code, 1861, s. 167—Prosecution of public servant.*—Upon the construction of s. 167 of the Criminal Procedure Code,—*Held* that the section by implication vested in the Court or authority to whom the Judge or other public servant not removeable, etc., was subordinate, the power of sanctioning or directing such prosecution. It did not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore has it unless there is a limitation. QUEEN *v.* KRISTNA RAU . . . **7 Mad., 58**

94. ———— **Power to sanction where no particular party is accused**—*Sending case for investigation.*—A Court had power to send a case for investigation to a Magistrate under s. 171 of the Criminal Procedure Code, 1861, where no particular individual had been accused. ESSAN CHUNDER DUTT *v.* PRANNATH CHOWDHRY **W. R., F. B., 71**

95. ———— **What Courts can give sanction**—*Criminal Procedure Code, 1872, s. 468—Case settled without evidence.*—The Courts that had jurisdiction to grant a sanction to proceedings under s. 468 of Act X of 1872, where the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. IN THE MATTER OF THE PETITION OF KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR *v.* KASI CHUNDER MOZUMDAR

[I. L. R., 6 Calc., 440

S. C. KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . **7 C. L. R., 330**

96. ———————— *Criminal Procedure Code, 1882, s. 195—Offence committed in presence of Court—Preliminary inquiry—Case settled without evidence.*—It is competent for a Civil Court before which a case may have been settled without

R., 6 Calc., 440, and *Zamindar of Sivagiri v. Queen, I. L. R., 6 Mad., 29,* dissented from on this point. SHASHI KUMAR DEY *v.* SHASHI KUMAR DEY

[I. L. R., 19 Calc., 345

97. ———— **Power of Appellate Court to sanction prosecution of abetment**—*Offence committed before lower Court.*—Where an offence was committed against a Court of first in-

the offence was abetment. IN THE MATTER OF ISHAN CHUNDER GHOSE . . . **15 W. R., 352**

98. ———— **Power of Civil Court**—*Criminal Procedure Code, 1861, s. 170.*—A Civil

99. ———————— *Power of Civil Court to commit for forgery or perjury—Criminal Procedure Code (1882), ss. 195 and 478—Witness*

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

of party to proceeding.—The power given to a Civil Court under Ch. XXXV of the Code of Criminal Procedure (Act X of 1882) to take action regarding "any offence referred to in s. 195" is not ordinarily restricted, in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence. It extends also to such offences when committed by a witness of the party. IN RE DEVJI VALAD BHAVANI . I. L. R., 18 Bom., 581

100. ——— Power of Mamlatdar—*Sanction of Collector—Prosecution of kulkarni for false report—Criminal Procedure Code, 1861,*

of the Collector was not necessary for that purpose REG. v. MALHAR RAMCHANDRA 7 Bom., Cr., 64

101. ——— Power of Revenue Court—*Criminal Procedure Code, 1872, ss. 468, 469, 470*

within the meaning of ss. 468 and 469 of Act X of 1872. Observations by STUART, *C.J.*, on the "subordination" of Courts of Revenue to the High Court within the meaning of ss. 468 and 469 of Act X of 1872. EMPRESS v. SABSUKH [I. L. R., 2 All., 633

102. ——— Power of District Magistrate—*Court of Assistant Magistrate—Preliminary inquiry—Criminal Procedure Code, 1882,*

103. ——— *Information by accused of offence—Report by a police officer of falsity of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate—Complaint—Criminal Procedure Code (Act V of 1898), ss. 195 and 537—Penal Code (Act XLV of 1860), s. 182*—The accused gave certain information to the police, who after investigating the matter

tenced under that section. The accused appealed

report, was not competent to hear the appeal. *Held* that, although police officers in a district were generally subordinate to the District Magistrate, the subordination contemplated by s 195 of the Code of Criminal Procedure was not such subordination. That subordination contemplated some superior officer of police Nor could the report of the police officer be regarded as a complaint under s 195 of the Code of

104. ——— *Criminal Procedure Code, 1872, s 468—Relative positions of a Magistrate of the first class, the Magistrate of the district, and the Court of Session.—Held* (OLD-

Court of Session, which had not power to give such sanction. IN THE MATTER OF THE PETITION OF GUR DAYAL . I. L. R., 2 All., 205

105. ——— *Criminal Procedure Code, 1872, s. 468—Sessions Court—Magis-*

MAHABH PAI . I. L. R., 2 Bom., 384

106. ——— *Criminal Procedure Code, 1872, s. 468—Subordinate Judge—District Judge.*—For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure, the Court of the Subordinate

IMPERATRIX v. LAKSHMAN SAKHARAM [I. L. R., 3 Bom., 481

107. ——— Power of second class Magistrate—*Criminal Procedure Code, 1872, s 467—Sanction for prosecution for giving false information to police officer, given by second class Magistrate of taluka.*—A second class Magistrate of a talukh, not being the official superior of a police station-house officer within the meaning of s. 467 of the Code of Criminal Procedure, 1872, could not sanction a prosecution under s. 182 of the Penal Code for

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

giving false information to the station-house officer. QUEEN v. VELAYUDAM PILLAI [I. L. R., 6 Mad., 146

108. ——— **Power of Sub-divisional Magistrate**—*Criminal Procedure Code, 1882, s. 195—Sanction to prosecute for false evidence granted by Magistrate on revising calendar.*—A Sub-divisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s. 195

109. — **Power of Small Cause Court Judge**—*Proceeding before Registrar*—

passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution
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QUEEN v. NA

110. ——— **Power of Civil Judge**—*Criminal Procedure Code, 1861, ss. 170, 171—Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused.*—The Civil Judge made an order, under ss. 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and, if so, by whom. *Held* that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order. RADHANAUTH BANERJEE v. KANGALEE MOLLAH [Marsh., 407: 2 Hay, 538

111. ——— *Power of District*

District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

proceeding IN THE MATTER OF THE PETITION OF MATHURA DAS . . I. L. R., 16 All., 80

112. ——— **Power of Sessions Judge**—*Sanction given on inquiry ordered during trial.*—Where, during an inquiry into allegations that a

of the prisoners, the High Court considered such a proceeding improper and eminently calculated to defeat the object of the inquiry. REG. v. KASHINATH DINKAR . . . 8 Bom., Cr., 126

113. ——— *Criminal Procedure Code, 1882, s. 195—Sanction to prosecute—"Subordinate Court," What is a—Sanction to prosecute refused by Subordinate Judge in suit over R5,000—Jurisdiction of District Court to grant sanction in cases to which appeal lies to High Court from Subordinate Judge.*—In matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to
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ANANT RAMCHANDRA LOTLIKAR [I. L. R., 11 Bom., 438

114. ——— *Criminal Procedure Code, s. 195—Sanction for prosecution of witness for perjury by Village Munsif.*—V was

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

115 ——— *Criminal Procedure Code, s 195—Sanction for prosecution for giving false evidence in a suit under Act XII of 1881 tried by an Assistant Collector of the second class—Sanction granted by Collector—* [illegible]

the order of the Court of the District Judge,—*Held* that the Court of a Collector, when granting sanction for prosecution under s. 195 of the Code of Criminal Procedure, 1882, in respect of false [illegible]

116. ——— *Criminal Procedure Code (Act X of 1882), ss. 195, 476—Order sanctioning prosecution—Evidence necessary for such order.*—Before a Court is justified in making an order under s. 476, directing the prosecution of [illegible]

had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted. *Queen* v. *Baijoo Lal, I. L. R., 1 Calc., 450,* and *In the matter of the petition of Kali Prosunno Bagchee, 23 W. R., Cr., 23,* followed. IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR. KHEPU NATH SIKDAR *v.* GRISH CHUNDER MUKERJI [I. L. R., 16 Calc., 730

117. ——— *Criminal Procedure Code (1882), s 195—"Subordinate Court"—Jurisdiction of the High Court to revoke or grant sanction in cases in which appeal lies to "Her Majesty in Council" from the Court of the Recorder of Rangoon.*—In matters relating to the grant of sanction to prosecute, under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which appeals from the former ordinarily lie, *i.e.*, lie in the majority of cases. Though the decree in the present instance was appealable to "Her Majesty in Council," still, as appeals [illegible]

I. L. R., 11 Bom., 438, followed MADURAY PILLAY *v.* ELDERTON . I. L. R., 22 Calc., 487

118. ——— *Criminal Procedure Code (1882), ss. 195, 407, and 476—Application for sanction to prosecute—Offence committed* [illegible]

suspected of having abetted the offence of giving false evidence in the course of proceedings instituted on behalf of the Forest Department in the Court of a second class Magistrate The District Magistrate had [illegible]

ordinary appellate authority; (2) that the second [illegible]

119 ——— *Inquiry preliminary to exercise of power to grant sanction—Offence by definite person or persons—Criminal Procedure Code (1882), s. 476—Civil Procedure Code (1882), s. 643.*—The provisions of s. 476 of the Criminal Procedure Code as well as of s. 643 of the [illegible]

Izarul Huq v. *Queen-Empress, I. L. R., 20 Calc.,*

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

349, followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group MAHOMED BHAKKU *v.* QUEEN-EMPRESS

[I. L. R., 23 Calc., 532

120. ———————— *Criminal Pro-*

opinion that false evidence has been given before him. QUEEN-EMPRESS *v* TIRUNARASIMHA CHARI

[I. L. R., 19 Mad., 18

121. ———————— *Criminal Procedure Code (1882), s. 195—Power of Court to go*

122 ———————— *Criminal Procedure Code (1882), s. 195—"Court to which appeals ordinarily lie"—Collector—District Judge*—For the purpose of granting or revoking a sanction to prosecute refused or granted under s. 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge *Hari Prasad* v *Debi Dial, I. L. R., 10 All., 552;* followed. *Queen-Empress* v. *Ajudhia Prasad, Weekly Notes, All (1895), 121,* considered. SHANKAR DIAL *v.* VENABLES

[I. L. R., 19 All., 121

123. ———————— *Criminal Procedure Code (1882), s. 195—Sanction for prosecution—Complaint found to be false on an investigation by the police, but without judicial enquiry.*—When a complaint was found to be false on an investigation being made by the police, and thereupon sanction was given under s 195, Criminal Procedure Code, for prosecuting the complainant for instituting a false complaint,—*Held* that the sanction was bad in law, as it was given without a judicial investigation of the complaint. MUKUNDA BEHARI *v.* BHIKARI CHARAN MAHANTI

[1 C W. N., 453

124. ———————— *Power of Court to grant sanction with regard to case pending in another Court—Power of Court to dispose of case pending on the file of another Magistrate without withdrawing it.*—*Held* that the Deputy Commissioner had no power to pass an order of dismissal under s. 203, Criminal Procedure Code, in a case which he had transferred to the First Extra Assistant Commissioner, and which was at the time pending in the Court of the latter, nor to grant sanction under the circumstances KUTAB ALI *v.* EMPRESS . . . . 3 C W. N., 490

125. ———————— *Penal Code (Act XLV of 1860), s. 182—False information with intent to cause public servant to use his lawful power to*

Officer had no jurisdiction to institute the proceedings or to grant sanction, inasmuch as the complaint which led to this trial was not made to him, but was made to the Deputy Commissioner without whose previous sanction or complaint no trial under s 182, Penal Code, could be held. That s. 476, Criminal Procedure Code, did not apply to the proceedings, as they were not judicial proceedings. ASMUTULLA *v.* EMPRESS . . . . 4 C. W. N., 366

7. DISCRETION IN GRANTING SANCTION.

126. ———— Exercise of discretion—*Criminal Procedure Code, 1861, s. 169.*—The discretion vested in a Civil Court under s 169, Code of Criminal Procedure, of sanctioning a criminal charge of perjury was one that should be most carefully exercised QUEEN *v.* POOSA RAM 6 W. R., Cr., 11

127. ———————— *Case settled*

OF KASI CHUNDER MAZUMDAR. JUGGUT CHUNDER MOZUMDAR *v.* KASI CHUNDER MOZUMDAR

[I. L. R., 6 Calc., 440

S. C. KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . . 7 C. L. R., 330

128. ———————— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s 195.*—Before granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to

SANCTION FOR PROSECUTION —*continued.*

7. DISCRETION IN GRANTING SANCTION —*continued.*

hold any inquiry as to all the persons who may be implicated in such offence. IN THE MATTER OF THE PETITION OF GOVINDANNAYAR [I. L. R., 7 Mad., 224

129. ———— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s. 195—False charge—Penal Code, s 211—Preliminary inquiry* —A prosecution of a charge under s. 211 of the Penal Code should not be granted under s. 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ facie* case against the accused. *Held* therefore where *S*, who had been tried before the Court of Session for an offence and acquitted, applied to the Court, in respect of the criminal proceedings

S or other inquiry, whether *S* had sufficient grounds in fact for accusing *G*, and whether there were good *primâ facie* grounds for suspecting *G* of abetting a false charge and permitting a prosecution. IN THE MATTER OF THE PETITION OF GOURI SAHAI [I. L. R., 6 All., 114

130. ———— *Criminal Procedure Code, s.195—Penal Code (Act XLV of 1860), ss. 193, 463* —In a case in which the Court of first instance finds an instrument to be genuine and the Judge in appeal happens to take a different view of the matter, it is not desirable to grant a sanction to prosecute under s. 195 of the Criminal Procedure Code. Principle which should guide a Court in sanctioning a prosecution explained. RAM PROSAD ROY *v.* SOOBA ROY . . 1 C. W. N., 400

131. ———— *Penal Code (Act XLV of 1860), s. 211—Discharge of an accused*

discharge, but on an application being made to the Sessions Judge for the purpose, the latter, without giving any notice to the persons against whom the sanction was asked for, made an order sanctioning their prosecution under s 211 of the Penal Code. *Held* that, having regard to the view that the Deputy Magistrate took of the matter when he refused the

that order is not a proper order and must be set aside. RAM NATH CHAMAR *v.* RAM SARAN LALL [1 C. W. N., 529

132. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Sanction to prosecute for making false affidavit—Application by person not a party to the suit through enmity—Proper grounds of sanction—Stage of proceedings when sanction to be granted.*—No Court should entertain an application to prosecute made by persons who are not parties to the suit out of which the proceedings for sanction arise An order granting sanction ought only to be given after careful consideration, and having in view the ends of justice, and not in order to assist the private ends of individuals. It is desirable in most cases that the Court should conclude and have all the facts before it

was not aware of the application or its contents and was not desirous of prosecuting, and the Munsif found that it was filed by one *R* who was not a party to the suit, out of ill feeling, and thereupon rejected the same: and where the sanction was, on appeal,

sanction was improperly granted by the Judge, and must be revoked IN THE MATTER OF THE PETITION OF CHANDRA KANT GHOSE . . 3 C. W. N., 3

133. ———— *Criminal Procedure Code, 1872, s 468—Discretion of High Court to grant sanction after refusal by Small Cause Court.*—In a case in which the High Court

justified in exercising the discretion vested in them by s. 468 unless it appeared very clearly that there were strong grounds for granting the sanction. MONEY MOHUN DEY *v.* DINONATH MULLICK [22 W. R., Cr., 11

134. ———— *Criminal Procedure Code, 1872, s 468—Grounds for sanction—Record.*—On an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure, 1872, it was not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. *In re Kasi Chunder Mozumdar, I. L. R., 6 Cal., 440,*

SANCTION FOR PROSECUTION —*continued.*

7. DISCRETION IN GRANTING SANCTION —*concluded.*

approved. SANGILI VIRA PANDIA CHINNATAMBIAR v. QUEEN. ZAMINDAR OF SIVAGIRI v. QUEEN [I. L. R., 6 Mad., 29

135. ——— *Criminal Procedure Code, ss 195, 435, 478—Forged documents filed in Court—Prosecution ordered by Court as to documents not on record—Power of High Court in revision* —Certain documents having been put

the District Munsif was not competent to go beyond the record. *Zamindar of Sivagiri* v. *Queen, I. L. R., 6 Mad., 29,* followed, and that the order was wrong and should be set aside. ABDUL KHADAR v. MEERA SAHEB . . I. L. R., 15 Mad., 224

136. ——— *Criminal Procedure Code, 1882, ss 202, 203, 476—Penal Code, s. 211—Complaint dismissed without preliminary*

as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a third class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Sessions only *Held* that, as there was no application before the first class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under s 476 of the Code of Criminal Procedure, the third class Magistrate had no jurisdiction to hold an inquiry. *Held* also that the first class Magistrate ought to have held a preliminary inquiry under s. 476, in order that the complainant might have an opportunity of showing the truth or *bonâ fides* of the complaint. QUEEN v. YENDAVA CHANDRAMMA [I. L. R., 7 Mad., 189

137. ——— *Forgery—Evidence of charge, Necessity for.*—Sanction to a prosecution of a witness or of a party to a suit, for the

primâ facie case made out for the charge. *Quære*—Where a document was not put in evidence or dealt with as evidence, but merely had a place on the Judge's file, sanction was necessary. SEETARAM SAHOO v. SHEO GOLAM SAHOO . 19 W. R., 183

8. REVOCATION OF SANCTION.

138. ——— Extent of power of revocation—*Criminal Procedure Code (Act V of 1898),*

SANCTION FOR PROSECUTION —*continued.*

8. REVOCATION OF SANCTION—*continued.*

s 195 —The power of revoking given under s. 195 (*b*) is only in respect of sanctions, and not of complaints. QUEEN-EMPRESS v. ANKANNA [I. L. R, 23 Mad., 205

139. ——— *Power to revoke sanction—Distinction between a sanction granted to a private person and a complaint by a Court—Criminal Procedure Code (Act X of 1882), ss 195 and 476.*—S 195 of the Criminal Procedure Code (Act X of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself.

subordinate Court *Ishri Prosad* v. *Sham Lal, I. L. R., 7 All., 871, Queen* v. *Baijoo Lall, I. L. R., 1 Calc, 450,* and *Gyan Chunder Roy* v. *Protab Chunder Dass, I. L. R., 7 Calc., 208,* referred to. QUEEN-EMPRESS v. RACHAPPA [I. L. R., 13 Bom., 109

140. ——— *Criminal Procedure Code, 1882, ss. 195, 476—High Court, Juris-*

[I. L. R., 13 Mad., 144

But *see* KHEPU NATH SIKDAR v. GRISH CHUNDER MOOKERJEE . . . I. L. R., 16 Calc., 730

and IN THE MATTER OF THE PETITION OF MATHURA DAS . . . . I. L. R., 16 All., 80

where the High Courts of Calcutta and Allahabad, respectively, have held that the High Court has power to set aside such an order on revision.

141. ——— *Criminal Pro-*

granted in respect of perjury committed in the

[I. L. R., 17 All., 51

142. ——— *Criminal Pro-*

afterwards to review his order and set aside the sanction. An application to a Sessions Judge for revocation of a sanction granted under s. 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be

SANCTION FOR PROSECUTION —*continued.*

8. REVOCATION OF SANCTION—*concluded.*

reviewed or revised by him. QUEEN-EMPRESS *v.* GANESH RAMKRISHNA . I. L. R., 23 Bom., 50

9. EXPIRY OF SANCTION.

143. ———— Prosecution commenced more than six months after granting of sanction, the period intervening being close holidays—*Penal Code, ss. 193 and 471—Criminal Procedure Code (1882), ss. 195 and 537—Irregularity in criminal proceedings—Magistrate, Jurisdiction of—General Causes Consolidation Act (I of 1887).*—Sanction to prosecute *R* for offences under ss. 193 and 471 of the Penal Code, committed in the course of a judicial proceeding, was granted on the 5th September 1893, and the prosecution was commenced before the Magistrate on the 7th March 1894, the 4th March being a Sunday, and the 5th and 6th Court holidays. *R* was committed to the Sessions. *Held* that, as s. 7 of Act I of 1887 does not apply to the Code of Criminal Procedure of 1882, and there is no provision of law by which the period provided by s. 195 during which a sanction may remain in force can be extended by [illegible] Procedure was not intended to override the provisions of s. 195, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired. RAJ CHUNDER MOZUMDAR *v.* GOUR CHUNDER MOZUMDAR

[I. L. R., 22 Calc., 176

10. FRESH SANCTION.

144. ———— Necessity for fresh sanc- [illegible] Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held* therefore where sanction to a prosecution had been granted [illegible] up again at any moment, and proceed with the prosecution, without fresh sanction. IN THE MATTER

SANCTION FOR PROSECUTION —*continued.*

10. FRESH SANCTION—*continued.*

OF THE PETITION OF GULAB SINGH GULAB SINGH *v.* DEBI PROSAD . . I. L. R., 6 All., 45

145. ———— Power to grant fresh sanction—*Fresh sanction granted more than six months after expiry of prior sanction—Grounds upon* [illegible] as to which the Court expressed no opinion, such fresh sanction should not have been granted unless [illegible]

146. ———— Power to re-try without [illegible] *want of* [illegible] a pro- [illegible] y an in- [illegible] shed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed. IN THE MATTER OF THE PETITION OF RAMI REDDI . . . . I. L. R., 3 Mad., 48

[illegible] Code, and no prosecution is commenced under it within that time, it is not open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction. The words "six months from the date on which the sanction was given" must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated. The Munsif who tried the suit out of which the application for sanction arose refused to sanction any prosecution; the Munsif who originally sanctioned the prosecution was a different officer; while the Munsif who gave the fresh sanction was neither the Munsif who tried the case nor the Munsif who sanctioned the

SANCTION FOR PROSECUTION
—continued.

10. FRESH SANCTION—*concluded.*

prosecution originally. *Semble*—Under these circumstances, it is extremely doubtful whether the sanction was such as is contemplated by s. 195 of the Criminal Procedure Code. DARBARI MANDAR *v* JAGOO LAL . . I. L. R., 22 Calc., 573

148. — **Sanction not acted upon within six months**—*Criminal Procedure Code (1882), s. 195—Lapse of sanction.*—If an order under s. 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar* v. *Jagoo Lal, I. L. R., 22 Calc., 573,* not followed. *Golab Singh* v. *Debi Prasad, I. L. R., 6 All., 45,* and *Baldeo Singh* v. *Prasadi, Weekly Notes, All. (1892), 245,* referred to MANGAR RAM *v.* BEHARI [I. L. R., 18 All., 358

11. POWER TO QUESTION GRAN[illegible] OF SANCTION.

149. ——— **Power of Deputy Magistrate**—*Penal Code, ss. 182 and 211—Sanction granted by superior Court.*—A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss 182 and 211 of the Penal Code Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court EMPRESS *v.* IRAD ALLY . . I. L. R., 4 Calc., 869

S. C. NUSIBUNNISSA BIBEE *v.* ERAD ALI [4 C. L. R., 413

150. ——— **Power of superior Court**—*Criminal Procedure Code of 1872, ss. 468, 469—Finality of order as to sanction*—*Held* that the sanction referred to in ss 468 and 469 of Act X of 1872, [illegible]
under [illegible]
Court. [illegible]
OLDFIE[illegible]
refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. BARKAT-UL LAH KHAN *v.* RENNIE [I. L. R., 1 All., 17

12. WANT OF SANCTION.

151. ——— **Objection to want of sanction**—*Semble*—The objection to the want of sanction should be taken at the trial. QUEEN *v.* KRISTNA RAU . . . . . 7 Mad., 58

152. ——— **Jurisdiction of Court without sanction**—*Trial of offence under Criminal Procedure Code, 1872, s. 468*—A complaint of an offence under s 468 of the Criminal Procedure Code, 1872, unaccompanied by the requisite sanction, could not be entertained at all by the Magistrate even for the examination of the complainant. ANONYMOUS [8 Mad., Ap., 2

SANCTION FOR PROSECUTION
—continued.

12. WANT OF SANCTION—*continued.*

153. ——— **Institution of case without sanction**—*Discretion of High Court to interfere—Trial finished without sanction.*—Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court [illegible]

[illegible] L. R., [illegible] note

154. ——— **Trial without sanction**—*Criminal Procedure Code, 1882, s. 197—Effect of subsequent sanction*—Where, after a magisterial [illegible]

having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect QUEEN EMPRESS *v.* MORTON [I. L. R., 9 Bom., 288

155 ——— *Criminal Procedure Code, 1882, s. 195*—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under s 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice. KALLY MOHUN MOOKERJEE *v.* EMPRESS . 13 C. L. R., 117

156. ——— ——— *Ground for quashing proceedings—Criminal Procedure Code,* [illegible]

be re-tried, sanction to their prosecution having been obtained. EMPRESS *v.* SABSUKH [I. L. R., 2 All., 533

157. ——— **Inquiry and commitment without sanction**—*Insufficient sanction—Criminal Procedure Code, 1882, ss. 195, 476*—Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code,—*Held* that, the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case,

SANCTION FOR PROSECUTION —*continued.*

12. WANT OF SANCTION—*concluded.*

and the commitment was illegal and should be quashed. EMPRESS *v.* NAROTAM DAS
[I. L. R., 6 All., 98

158. ———— Commitment without sanction as to one prisoner—*Ground for quashing commitment.*—Where the sanction to the prosecution accorded under s. 169, Code of Criminal Procedure, 1861, extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply. QUEEN *v.* WOODHRAUL SINGH
[10 W. R., Cr., 24

QUEEN *v.* RAJKISHORE ROY 15 W. R., Cr., 55

159. ———— Proceedings without sanction—*Extortion—Public servant—Criminal Procedure Code, 1861, s. 167.*—Where a complaint

offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution. REG. *v.* PARSHRAM KESHAV
[7 Bom., Cr., 61

13. NON-COMPLIANCE WITH SANCTION.

160. ———— Departure from terms of sanction—*Power of Local Government—Prosecution of Judge or public servant—Criminal Pro-*

the prosecution was to be preferred and conducted,

before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanc-

that *Mr. C* had preferred any charge against, or taken any part in the prosecution of, the accused

[6 Bom., Cr., 52

161. ———— Non-prosecution under sanction—*Criminal Procedure Code, 1872, s. 468 and s. 142—Power of District Magistrate to proceed without complaint.*—Where sanction had been given under s. 468 of Act X of 1872 by a Deputy

SANCTION FOR PROSECUTION —*concluded.*

13. NON-COMPLIANCE WITH SANCTION —*concluded.*

Magistrate to a person to prosecute another for bring-

162. ———— Effect on sanction of death of grantee—*Criminal Procedure Code, s. 195.*—A Civil Court granted sanction under s. 195 of the Code of Criminal Procedure to the defendant in a suit to prosecute certain witnesses for perjury. The defendant died without having preferred a complaint. His brother thereupon preferred a complaint, and the Magistrate dismissed it under s. 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions
directed
inquiry
was right
[I. L. R., 12 Mad., 47

SAPINDAS.

See HINDU LAW—INHERITANCE—GENERAL HEIRS—SAPINDAS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—GRAND-DAUGHTER.
[I. L. R., 20 Bom., 173

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—STEP-MOTHER.
[I. L. R., 5 Mad., 29
I. L. R., 8 Mad., 132
I. L. R., 11 Bom., 47

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW.
[I. L. R., 2 Bom., 388
I. L. R., 5 Bom., 110
L. R., 7 I. A., 212
I. L. R., 15 Bom., 234
I. L. R., 21 Bom., 739
I. L. R., 18 Mad., 168

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—BROTHER'S DAUGHTER'S SON . . 1 W. R., 43
[I. L. R., 9 Calc., 563

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSIN.
[I. L. R., 17 Calc., 518
I. L. R., 22 Calc., 339
I. L. R., 17 All., 523

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—HALF BLOOD RELATIVES . . I. L. R., 19 All., 215

See HINDU LAW — STRIDHAN — DESCRIPTION AND DEVOLUTION OF STRIDHAN.
[I. L. R., 12 Bom., 505
I. L. R., 17 Bom., 114

SARANJAM.

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 6 Bom., 598
I. L. R., 15 Bom., 247

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.
[I. L. R., 15 Bom., 247, 519

———— Right to possession and management of—

See LIMITATION ACT, 1877, ART. 144—IMMOVEABLE PROPERTY.
[I. L. R., 15 Bom., 247

See PENSIONS ACT, s. 4.
[I. L. R., 16 Bom., 586

See SERVICE TENURE.
[I. L. R, 17 Bom., 431
L. R., 20 I. A., 50

SAYER COMPENSATION.

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Calc, 8

SCHEDULE.

———— Verification of—

See INSOLVENT ACT, s. 6
[11 B. L. R., Ap., 34

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846.
[I. L. R., 15 Bom., 505

See APPEAL IN CRIMINAL CASES—ACTS—ACT XXXVII OF 1855.
[I. L. R, 12 Calc., 536

See CRIMINAL PROCEEDINGS.
[I. L. R., 13 Mad., 353

See GUARDIANS AND WARDS ACT, 1890, s. 1 . . I. L. R., 18 Mad., 227

See LOCAL GOVERNMENT.
[I. L. R., 10 Bom., 274

———— Notification under—

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
[I. L R., 14 Mad, 121

———— s. 5.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWERS OF COURT, ETC. I. L. R., 15 Calc., 365

———— s. 6.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.
[I. L. R., 26 Calc., 874

SCIRE FACIAS, WRIT OF—

———— Suit upon writ — *Non-joinder of plaintiff—Parties.*—Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only sued upon it,—*Held* that the non-joinder of the other was a ground of non-suit, and that the objection might be taken at any stage. ISSUR CHUNDER MUNDUL *v.* HEIRS OF GOLAM ALI . . 1 Ind. Jur., N. S., 249

SEA CUSTOMS ACT (VIII OF 1878).

———— s. 128 — *Trans-shipment — Permit—Lien on goods mentioned in permit.*—A trans shipment permit issued under s 128 of the Sea Customs Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them. PREMJI TRIKAMDAS *v* MADHOWJI MUNJI . I. L. R., 4 Bom., 447

———— s. 197 and s. 8—*Duty and liability of Customs Collector—Negligence of Superintendent of Customs* —By the negligence of the Superintendent of Sea Customs at the port of C in removing goods to a sea custom warehouse and in keeping them in the warehouse, which, owing to its leaky roof, was utterly unfit for such purpose, the goods were damaged. The owner of the goods sued the Collector of the district, who, under s. 8 of the Sea Customs

s 197 of the Sea Customs Act, 1878, and that the Collector was not responsible for the acts of the Superintendent of Sea Customs COLLECTOR OF GODAVARI *v.* ISUF KASIM NANA
[I. L. R., 7 Mad., 42

SEAMAN, DISCHARGE OF—

See MERCHANT SHIPPING ACT, 1854, ss. 43, 207 . 1 Ind. Jur., N. S., 371
[6 Bom., O. C., 42

SEARCH BY POLICE.

See CRIMINAL PROCEDURE CODES, s 103.
[I. L. R., 21 Mad., 83

See OPIUM ACT, s. 9.
[I. L. R., 24 Calc., 691

See PRIVATE DEFENCE, RIGHT OF.
[I. L. R., 19 Mad., 349

SEARCH-WARRANT.

See ARMS ACT, 1878, s. 10.
[I. L. R., 15 All., 129

See CALCUTTA POLICE ACT, s. 5.
[I. L. R, 20 Calc., 670

SEARCH-WARRANT—*concluded.*

See Escape from Custody.
[I. L. R., 19 Mad., 310

See Warrant . 8 W. R., Cr., 74
[I. L. R., 13 Mad., 18
I. L. R., 22 Bom., 949

SEAWORTHINESS.

See Bill of Lading . 8 W. R., 35
[I. L. R., 13 Bom., 571
I. L. R., 19 Bom., 639

See Contract—Conditions precedent.
[2 B. L. R., O. C., 127

See Insurance—Marine Insurance.
[5 Moore's I. A., 361
Cor., 5 : 2 Hyde, 107

SECOND APPEAL.

See Cases under Appeal.

See Burma Courts Act, 1875, s. 27.
[I. L. R., 10 Calc., 946

See Cases under Small Cause Court, Mofussil.

See Cases under Special or Second Appeal.

SECRETARY OF CHARITABLE INSTITUTION.

———— Suit by, against subscriber.

See Right of Suit—Subscription.
[10 C. L. R., 197

SECRETARY OF MUNICIPAL BOARD.

———— Order of—

See Stamp Act, 1879, sch. I, art. 22.
[I. L. R., 19 All., 293

SECRETARY OF STATE.

See Parties—Parties to Suits—Government.

———— Liability of—

See Cases under Act of State.

———— Power of—

See Cession of British Territory in India . . 10 Bom., 37
[I. L. R., 1 Bom., 367
L. R., 3 I. A., 102

———— Privilege of, as to debts.

See Crown Debts.
[I. L. R., 12 Calc., 445
5 Bom., O. C., 23

———— Suit against—

See Costs—Taxation of Costs.
[I. L. R., 15 Mad., 405
I. L. R., 17 Mad., 162

SECRETARY OF STATE—*concluded.*

See Jurisdiction—Causes of Jurisdiction—Dwelling, Carrying on Business, or Working for Gain.
[1 Hyde, 37
1 Mad., 286
I. L. R., 14 Calc., 256

See Small Cause Court, Mofussil—Jurisdiction — Government, Suits against . I. L. R., 17 Calc., 290

———— Suit by, or on behalf of—

See Limitation Act, 1877, art. 149.
[I. L. R., 19 Mad., 165

1. ———— Liability of Secretary of State for acts of public servants—*Acts done* [illegible]

2. ———— Liability of Secretary of State for damages occasioned by negligence [illegible]

[illegible] insular and Oriental Steam Navigation Co. v. Secretary of State for India
[Bourke, A. O. C., 166 : 5 Bom., Ap., 1

SECUNDERABAD, CANTONMENT OF—

See Security for Costs—Suits.
[I. L. R., 21 Calc., 177

SECURITY FOR COSTS.

See Execution of Decree—Effect of Change of Law, pending Execution.
[I. L. R., 16 Calc., 323

See Execution of Decree—Stay of Execution . I. L. R., 13 Bom., 241

See Insolvent Act, s. 73.
[5 B. L. R., 179
15 B. L. R., Ap., 10

See Letters Patent, High Court, cl. 15.
[I. L. R., 18 Calc., 182
I. L. R., 21 Calc., 473

See Pauper Suit—Appeals 17 W. R., 68
[I. L. R., 3 Mad., 66
I. L. R., 3 Bom., 241

See Practice—Civil Cases—Security for Costs.

SECURITY FOR COSTS—*continued*

See PRIVY COUNCIL, PRACTICE OF—SUBSTITUTION OF APPELLANT. [I. L. R., 17 Calc., 693

See RULES OF HIGH COURT, BOMBAY [I. L. R., 13 Bom., 458

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT. [5 B. L. R., Ap., 23, 24
11 B. L. R., 415
14 B. L. R., 180

See SURETY—ENFORCEMENT OF SECURITY. [9 B. L. R., Ap, 17
I. L. R., 2 All., 604
I. L. R., 12 Calc., 402
I. L. R., 15 Calc., 497
I. L. R., 16 Calc., 323

See TRUST . I. L. R., 5 Calc., 700

1 SUITS.

1. ——— Security by plaintiff—"*Immoveable property*"—*Leasehold*—Leasehold property is "immoveable property" within the meaning of s 34, Act VIII of 1859 ULLMAN *v* JUSTICES OF THE PEACE FOR CALCUTTA . 7 B. L. R., Ap, 60

2. ——— *Civil Procedure*

SHAMA SUNDARY DASSEE *v* RASH BEHARY DHUR [3 C. W. N., 753

3. ——— *Infant female plaintiff or next friend—Civil Procedure Code (Act XIV of 1882), s. 380—Practice.*—Unless in exceptional cases, neither an infant female plaintiff nor her next friend ought to be required to give security for costs. BAI POREBAI *v.* DEVJI MEGHJI [I. L. R., 23 Bom., 100

4. ——— *Practice—Suit for money—Civil Procedure Code (Act XIV of 1882), s. 380; (Act VI of 1888), s. 5.*—A suit to recover

Court will order security for costs to be given by a female plaintiff in such a suit. DEGUMBARI DEBI *v.* AUSHOOTOSH BANERJEE I. L. R., 17 Calc., 610

5. ——— *Civil Procedure Code (1882), s 380—Suit for amount of legacy under will—Suit in nature of administration suit—Discretion of Court—Construction of Statutes—"May"—"Shall."*—The power given to the Court under s. 380 of the Civil Procedure Code to order security for costs is discretionary, and one which the Court ought, or ought not, to exercise according to the

SECURITY FOR COSTS—*continued.*

1. SUITS—*continued.*

circumstances of each case; and unless it is shown that the exercise of the power is necessary for the reasonable protection of the defendant, the Court

to give security for the costs of the suit. A plaintiff who is entitled under a will to a beneficial interest in a part of the surplus income derived from immoveable property does not become thereby "possessed of immoveable property" within the meaning of s 380. IN THE GOODS OF PREMCHAND MOONSHEE BIDHATREE DASSEE *v.* MUTTY LALL GHOSE [I. L. R., 21 Calc, 832

6. ——— *Plaintiff in another presidency*—The Court was held to have no power to order a plaintiff resident in another presidency to give security for costs GAHAN *v.* OWEN . Cor., 11

7.

payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. KOROONAMOYEE DEBIA *v* OOMA CHURN DEB . . 12 W. R., 465

8. ——— *Plaintiff residing out of jurisdiction—Suit for administration.*—The provisions of s. 34, Act VIII of 1859, were not intended to apply to a case where the plaintiffs brought a suit for administration and partition of property in which they were entitled to a share, the extent of the share being in dispute. RUSSICK LALL DAY *v.* JADUBRAM DAY . 10 B. L. R., Ap., 25

9. ——— *Civil Procedure*

LALDIN ABDULA . I. L. R., 3 Bom., 227

10. ——— *Civil Procedure Code (Act XIV of 1882), s 380—Wadhwan—British India—Residence.—Held* that a plaintiff, being a resident in Wadhwan in Kathiawar and possessed of immoveable property there, could not be required to give security for costs under s. 380 of the

SECURITY FOR COSTS—*continued.*

1. SUITS—*concluded.*

Civil Procedure Code (Act XIV of 1882). Wadhwan being within the limits of British India. TRICCAN PANACHAND *v.* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY I. L. R., 9 Bom., 244

11. ———— *Civil Procedure Code (Act XIV of 1882), s 380—Cantonment of Secunderabad.*—For the purposes of s 380 of the Code of Civil Procedure, the British Cantonment of Secunderabad is a place out of British India HOSSAIN ALI MIRZA *v.* ABID ALI MIRZA I. L. R., 21 Calc., 177

12. ———— *Security where plaintiff has left the country.*—Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the Court to take security for costs before the case is decided, and if no security be furnished, the Court will pass judgment against the plaintiff by default. But if the defendant allows the case to go to judgment, the Court on appeal cannot pass any order calling for security for the costs of the lower Court, which must be left to be realized in execution IN THE MATTER OF THE PETITION OF CALCUTTA AND SOUTH-EASTERN RAILWAY COMPANY 8 W. R., 217

13. ———— *Suit to enforce trust under a will—Want of personal interest*—In a suit by the representatives of a testator to enforce the due performance of charitable and religious trusts in which they are not personally interested, the plaintiffs ought to be required to give security for costs. PROJOMOHUN DOSS *v.* HURROLOLL DOSS [6 C. L. R., 58

14 ———— *Poverty—Speculative suit.*—The mere fact that a plaintiff is a poor man, and has parted with a portion of his interest in the subject-matter of the suit for the purpose of obtaining funds to carry on the suit, is no sufficient ground to ask that security for the costs of the suit may be required of him, it is otherwise where he is, not the real litigant, but a mere puppet in the hands of others. KHAJAH ASSENOOLLAJOO *v.* SOLOMON [I. L R., 14 Calc, 533

2 APPEALS

15. ———— **Security by appellant**—*Power of single Judge of High Court to make order for security*—A single Judge has full power to make an order for security for the costs of an appeal. MUZHUR HOSSAIN *v.* DENOBUNDOO SEN [Bourke, O C., 119

Affirmed on appeal Bourke, A. O. C., 40

16. ———— *Power of single Judge of High Court to make order for security.*—

held that a single Judge is vested with all the powers of an Appellate Court with reference to the

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

costs of an appeal, that when an appellant ...

required, give security for the costs of an appeal before proceeding with it. MONOHUR DOSS *v.* KHODRUM BEGUM . . . Bourke, O. C., 110

17. ———— *Appeal from order of Commissioner of Insolvent Court—Civil Procedure Code, 1859, s. 342*—S 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. IN THE MATTER OF RAMSEBAK MISSER [5 B. L. R., 179

18. ———— *Discretion of Judge—Notice to party affected—Civil Procedure Code, 1882, s 549.*—The discretion conferred on an Appellate Court by s. 549, Civil Procedure Code, 1882, to demand security for costs, must be properly exercised; and such discretion is not so exercised when the order requiring such security is made without

[I. L. R., 5 All., 380

19. ———— *Notice of order for security*—The issue of a preliminary notice to show cause why an appellant should not furnish security for the costs of appeal is not equivalent to a demand, and, if the order to furnish security is made in the absence of the appellant, the order must be communicated to him before he can be held to have disobeyed it TIMMU *v.* DEVA RAI [I. L. R., 5 Mad., 265

20. ———— *Civil Procedure Code, 1859, s. 342.*—Circumstances under which an order may be made requiring security for costs of appeal to be deposited under s 342 of Act VIII of 1859 BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . . . . . 7 B L. R., Ap., 59

21. ———— *Civil Procedure Code, 1859, ss. 342, 345, 346—Pauper appellant.*—By the words "before the appellant is called upon to appear and answer" in s 342, as compared with similar words used in subsequent sections, especially

interested in the matter, the case was considered a proper one in which security should be given. JOGENDRO DEB ROYKUT *v.* FUNINDRO DEB ROYKUT [18 W. R., 102

22. ———— *Grounds for order for security—Poverty of appellant—Civil*

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

Procedure Code, 1882, s. 549.—S. 549 of the Civil Procedure Code was never intended by the Legislature to derogate from the right of appeal given by the law to every person who is defeated in a suit in the Court of first instance, and an application should not be granted under that section of which the only ground is a statement that the appellant is not pecuniarily in a position to pay the costs of the appeal if it should be dismissed. *Maneckji Limji Mancherji* v. *Goolbai, I. L. R., 3 Bom., 241,* followed. *Ross* v. *Jaques, 8 M. & W., 13; Seshayyangar* v. *Jainulavadin, I. L. R., 3 Mad., 66,* and *Jogendro Deb Roykut* v. *Funindro Deb Roykut, 18 W. R., 102,* referred to. LAKHMI CHAND *v.* GATTO BAI . . . I. L. R., 7 All., 542

23. ———————— *Grounds for order for security—Civil Procedure Code, 1882, s. 549—Poverty of appellant.*—*Held* by the Full [illegible]

[I. L. R., 8 All., 203

24. ———————— *Civil Procedure Code (Act XIV of 1882), s. 549—Poverty of appellant—Ground for ordering security for costs of appeal.*—Under the circumstances of this case, the Court refused an application that the appellant, on the ground that he was a person without means, should give security for the costs of the appeal. HEWETSON *v.* DEAS . I. L. R., 21 Calc., 526

25. ———————— *Civil Procedure Code, 1882, s. 549—Poverty of appellant* [illegible]

v. ESSA BIN KALIFFA . I. L. R., 13 Bom., 458

26. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 549 and 617, Explanation—Appeal by defendant against the order under s. 244, granting execution—Appellant required to give security for the costs of the appeal and of the original suit.*—The Court can require an appellant from an order made under s. 244 of the Civil Proce- [illegible]

27. ———————— *Civil Procedure Code, 1859, ss. 106, 342—Assignee substituted for plaintiff.*—Under s. 342, Act VIII of 1859, the High Court had discretion to demand security for costs from an appellant [illegible]

[illegible] plaintiff as a reason for abating the suit. HEERALALL SEAL *v.* CARAPIET . 13 W. R., 431

28. ———————— *Appellant out of jurisdiction.*—*Quære*—Whether in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons, *i e*, notice of the appeal. HUFAZUTTOOLAH CHOWDRY *v.* HUMEEDHUR ROHMAN . . . . . 6 W. R., Mis., 123

29. ———————— *Beng. Reg. XIV of 1829, s. 2, cl. 1—Inhabitant of foreign territory*—Bengal Regulation XIV of 1829, s 2, cl. 1, enacted that every person being an inhabitant of [illegible]

[illegible] furnished the necessary [illegible]

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

1845 repealed Bengal Regulation XIV of 1829, s. 2, cl. 1. WISE *v.* JUGBUNDOO BOSE
[7 Moore's I. A., 431

30. ———————— *Grounds for ordering security* —Cause being shown on a rule *nisi* for an order for security to be given by the appellant for the costs of an appeal (similar orders having been previously made on the application of other defendants), it appeared that an unusual number of defendants had been joined in the suit, which had been withdrawn on a previous occasion when nearly tried out; and that the plaintiff, who sued as a relator, was poor and resided out of the jurisdiction, and had not paid interlocutory costs, for which an attachment had issued. *Held* that an appellant will not be ordered to give security for costs previously incurred; that the fact of similar applications having been granted in the suit, the poverty of the appellant, and the fact of his dwelling out of the jurisdiction, as well as the peculiar circumstances of the case, non-payment of interlocutory costs, a former withdrawal of the suit, and the joining of an unusual number of defendants, are grounds

[Bourke, A. O. C., 40

Confirming the judgment in the same case in
[Bourke, O. C., 119

31. ———————— *Continuation of order made against plaintiff for security—Civil Procedure Code, 1859, s. 34.*—A plaintiff who resided out of India paid a sum of money into Court as security for costs under s. 34 of Act VIII of 1859. He subsequently obtained a decree against the defendant, and the defendant appealed against that decree *Held* that the defendant was not entitled to an order detaining in Court, pending the appeal, the money which had been paid in under s 34. FLEMING *v.* SHEARMAN . . . 4 B. L. R., O. C., 92

See IN RE DITTA HARAKMAN SINGH
[3 B. L. R., F. B., 45

S. C. DITTIA HURRUCKMAN SINGH *v.* MODHOOSOODUN PYNE . . . 12 W. R., F. B., 16

32. ———————— *Discretion of Court to refuse security—Civil Procedure Code (Act XIV of 1882), s. 549.*—An original Court rejected, as insufficient, security offered for the purpose of conforming to an order of the High Court under s. 549, Civil Procedure Code, and refused to receive other security offered in lieu after the time fixed by the order had expired. This was affirmed by the High Court. *Held* that, as the High Court had a discretion to enlarge the time allowed for finding security and to accept other security in lieu of that rejected or to refuse to do either, it had, under these circumstances, judicially exercised that discretion in refusing. RAJAB ALI *v.* AMIR HOSSEIN . . I. L. R., 17 Calc., 1

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

33. ———————— *Civil Procedure Code, 1877, s. 549—Extension of time for giving security—Procedure.*—Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished; but if no application is made for such extension of time, and such security is not furnished within the time ordered, it is imperative on the Court to reject the appeal. HAIDRI BAI *v.* EAST INDIAN RAILWAY COMPANY
[I. L. R., 1 All., 687

34. ———————— *Civil Procedure Code, 1882, s. 549—Application for extension of period for finding security for costs of appeal after default.*—S. 549 of the Code of Civil Procedure being imperative, the time cannot be extended after the expiry of the period fixed in the order directing the appellant to find security for the costs of an appeal. *Haidri Bai* v. *East Indian Railway Company, I. L. R., 1 All., 687,* followed. SHRAJUDIN *v.* KRISHNA
[I. L. R., 11 Mad., 190

35. ———————— *Civil Procedure Code (Act XIV of 1882), s. 549—Appeal rejected for want of security—Extension of time for giving security—Discretion of Court.*—The proper construction of s 549 of the Civil Procedure Code is

the Court is bound to reject the appeal. BUDRI NARAIN *v.* SHEO KOER . I. L. R., 11 Calc., 716

In the same case on appeal to the Privy Council,

L. R., 1 All., 687, overruled In this case, the Registrar was directed to allow only the costs applicable to the question argued and decided. BADRI NARAIN *v.* SHEO KOER . I. L. R., 17 Calc., 512
[L. R., 17 I. A., 1

36. ———————— *Civil Procedure Code (Act XIV of 1882), s 549—Rejection of appeal—Discretion of Appellate Court to extend time for furnishing security.*—The security for the respondents' costs which the High Court had demanded under s 549 not having been furnished within the time fixed, and the Court, in the exercise of its discretion, having refused to extend the time, the appeal was rejected under that section. *Held* that this was not a case for interference. MODHUSUDAN DAS *v.* ADHIKARI PRAPANNA
[I. L. R., 17 Calc., 516

S. C. MODHUSUDAN DOSS *v.* KRISHNA PRAPANNA RAMANUJ DOSS . . . L. R., 17 I. A., 9

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

37. ——————— *Extension of time for furnishing security—Exceptional circumstances—Civil Procedure Code (1882), s 549.*—The appellant applied for an extension of the time for giving security for the costs of the appeal on the ground that, in the exceptional state of things in Bombay caused by the prevalence of the plague, she had been unable to raise the money required *Held* that under the circumstances the application should be granted. S. 549 of the Civil Procedure Code

38. ——————— *Agreement to deposit security—Failure to make deposit.*—An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain

sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect ELIAS *v* CHUCKERBUTTY

[1 Ind. Jur., N. S., 223

39. ——————— *Civil Procedure Code, s 549—Security for costs—Amount of security not fixed—Dismissal of appeal—Practice.*—

v. KISHORI LAL . . I. L. R., 9 All., 102

SECURITY FOR COSTS—*concluded.*

2. APPEALS—*concluded.*

40. ——————— *Form and contents of order for security for costs—Omission to state amount — Practice — Civil Procedure Code*

this point. LEKHA *v* BHAUNA

[I. L. R., 18 All., 101

SECURITY FOR GOOD BEHAVIOUR

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES

[I. L. R., 9 Calc., 878
22 W. R., Cr., 68

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 3 N. W., 126
[I. L. R., 1 All., 666

1. ——— Transfer of proceedings—

TION OF AMAR SINGH . . I. L. R., 16 All., 9

2 ——— Discretion of Court, Exercise of—*Criminal Procedure Code, 1872, ss. 505,*

3. ——— Person of violent or turbulent character—*Criminal Procedure Code, 1861, s. 297.*—S. 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. IN RE NARAIN SOOBOODHI

[6 W. R., Cr., 6

4. ——— Persons convicted of theft—*Criminal Procedure Code, 1861, s. 295—Theft.*—S 295 did not apply to persons convicted and punished for theft. QUEEN *v.* KUNEE SONAR

[7 W. R, Cr., 57

5. ——— Habitual offenders—*Acts committed by persons in performance of duties as burkandazes in zamindari—Habitual association—Joint trial—Code of Criminal Procedure (Act V*

SECURITY FOR GOOD BEHAVIOUR
—*continued.*

ance of their duties, were called upon to execute bonds for their good behaviour on the grounds (1) that they habitually commit extortion; (2) that they habitually commit or attempt to commit or abet the commission of offences involving a breach of the peace; (3) that they are dangerous persons so as to render their being at large without security hazardous to the community. They were tried jointly by the Magis-

these persons in regard to the first and second grounds, there certainly would be no such connection between them in regard to their characters so as to make them dangerous persons and thus to render their being at large without security hazardous to the community, and that proceedings should have been separately taken against each of them S. 110 of the Code of

were discharged by the zamindar or ceased to be in his employ, the acts would no longer be committed, it being no longer to their interests to do such acts in the interest of their employer, and they certainly would not be likely to commit them in their own private capacities The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences. HARI TELANG *v.* QUEEN-EMPRESS . I. L. R., 27 Calc, 781

HARI TELANG *v.* EMPRESS . 4 C. W. N., 531

6. ——— **Jurisdiction of Magistrate** —*Person not residing within his jurisdiction—Reputation—Code of Criminal Procedure (Act V*

contemplated that the Magistrate in such a case should issue a warrant so as to pursue the person concerned into another jurisdiction Under the terms of s. 110 of the Criminal Procedure Code, the reputation which the person is found to have means the reputation of that person in the neighbourhood in which he resides KETABOI *v.* QUEEN-EMPRESS

[I. L. R., 27 Calc, 993

7. ——— **Persons not proved to have committed crime**—*Criminal Procedure Code, 1872, s. 505*—The exercise of the power given by s. 505 of the Criminal Procedure Code was not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged. IN RE PEDDA SIVA REDDI

[I. L. R, 3 Mad., 238

SECURITY FOR GOOD BEHAVIOUR
—*continued.*

8. ——— **Absconded offender arrested without summons**—*Criminal Procedure Code, 1861, s. 306.*—Where an accused person was arrested as an absconded offender, and, without evidence being gone into on that charge, an inquiry was made into his mode of livelihood, without any summons being issued under s. 306 of the Criminal Procedure Code, such proceedings were held to be irregular. QUEEN *v.* HUTTOOA . 3 N. W., 2

9. ——— **Opportunity to make defence**—*Information of accusation to accused—Criminal Procedure Code (Act X of 1882), ss. 109, 110, 112*—Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet QUEEN-EMPRESS *v.* ISWAR CHANDRA SUR

[I. L. R, 11 Calc., 13

10 ——— **Right to be heard by pleader**—*Accused person liable to imprisonment in default of giving security—Notice—Code of Criminal Procedure (Act V of 1898), ss. 110, 123, and 340*—Where a reference is made to the Sessions Judge under s. 123 of the Code of Criminal Procedure, he is bound to give notice to the person concerned and also to hear his pleader, if he should be so represented The term "accused" in s 340 of the Code of Criminal Procedure applies to a person who is liable under s 123 of that Code to imprisonment in default of giving security NAKHI LAL JHA *v.* QUEEN-EMPRESS I. L. R., 27 Calc., 656

11 ——— **Requisites for order**—*Evidence satisfying Magistrate of bad character of accused—Criminal Procedure Code 1861, s. 296.*—To justify a Magistrate in taking action under

12 ——— **Information on which Magistrate may act**—*Information showing that a breach of the peace is imminent—Order to furnish security for good behaviour for three years—Arrest of accused—Inquiry as to truth of information—Proof of information—Statements of persons not called as witnesses—Criminal Procedure Code,*

may to some extent be of a hearsay and general description; but when the party to whom the order is directed appears in Court in obedience thereto, the inquiry must be conducted on the lines laid down in s. 117. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for sureties of the peace or for good behaviour

SECURITY FOR GOOD BEHAVIOUR —*continued.*

There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the peace or that is likely to occasion a breach of the peace; and in the

[illegible]

Magistrate is not competent, upon information that suggests the likelihood of a breach of the peace, to

[illegible]

cedure Code, the Magistrate must act on recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace," but "that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person." EMPRESS *v.* BABUA

[I. L. R., 6 All. 132

13. ———— *Criminal Procedure Code, 1861, s. 306—Information of police.*— In an inquiry under s. 306 of the Code of Criminal

[illegible]

14. ———— "Show cause"—*Criminal Procedure Code, ss. 107, 112, 117, 118, 239—Burden of proof—Joint inquiry—Opposing factions dealt with in one proceeding—Nature and quantum of evidence necessary before passing order for security*—Upon general principles, every person is entitled, in the absence of exceptional authority conferred by the law to the contrary effect, when re-

[illegible]

the case of such persons is therefore not *ipso facto* illegal, and even in cases where one and the same proceedings taken by the Magistrate under ss. 107, 112, 117, and 118 improperly deals with more persons than one, the matter must be considered upon the individual merits of the particular case, and would at most amount to an irregularity which, accord-

[illegible]

SECURITY FOR GOOD BEHAVIOUR —*continued.*

[illegible]

that the burden of proving innocence is upon such person. The onus of proof lies upon the prosecution

[illegible]

the principles relating to the trial of members of

[illegible]

and void, but only where the accused have been prejudiced by it. *Empress* v. *Lachan, Weekly Notes, All., 1891, p. 28,* and *Hossein Buksh* v *Empress, I. L. R., 6 Calc., 96,* referred to. In proceed-

[illegible]

not proceed purely upon an apprehension of a breach of peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated, which would lead to the conclusion that an order for furnishing security is necessary. What the nature of the facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's information requires it, overt acts must be proved before

[illegible]

15. ———— Ground for ordering security—*Criminal Procedure Code, 1872, s. 505.*—*Evidence of character.*—Act X of 1872, s. 505, enabled the Magistrate to require security for good behaviour, whenever it appeared to him, from the evidence as to general character adduced before him that any person was by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the

SECURITY FOR GOOD BEHAVIOUR —*continued.*

same to have been stolen, or of notoriously bad livelihood or was a dangerous character. But when the

[24 W. R., Cr., 51

16. ——— Evidence of general bad character—*Criminal Procedure Code, 1872,*

Act, unless in addition it was shown that he was of a character so desperate and dangerous as to render his release, without security for one year, hazardous to the community. QUEEN v. MISREE LALL

[4 N. W., 117

18. ——— Record of previous convictions—*Criminal Procedure Code, 1882, ss. 110, 117, and 118*—The object of taking security for good behaviour from a person is solely to secure his good behaviour in future. The mere record of previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of ss. 110, 117, and 118 of the Code of Criminal Procedure (Act X of 1882), and it is wrong to use these provisions so as to add to the punishment for past offences. IN RE RAJA VALAD HUSSEIN SAHEB

[I. L. R., 10 Bom., 174

19. ——— *Criminal Procedure Code (Act X of 1882), ss. 110, 112.*—The mere fact that a person from whom security is required has been previously convicted of offences against property, is not sufficient to justify proceedings under s. 110 of the Code of Criminal Procedure, unless there be additional evidence that the person complained against has done some act or resumed avocations indicating on his part an intention to return to his former course of life. IN THE MATTER OF THE PETITION OF HAIDAR ALI . . . I. L. R., 12 Calc., 520

20. ———

SECURITY FOR GOOD BEHAVIOUR —*continued.*

to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardised. Where, therefore, the evidence adduced before the Magistrate did not show that a person was "by habit a robber, house-breaker, or thief, or a receiver of stolen

which the procedure of s. 505 should be enforced. EMPRESS v. NAWAB . . I. L. R., 2 All., 835

21. ——— Person convicted and punished for theft—*Form of order—Code of Criminal Procedure (Act X of 1872), ss. 504, 505.*—An accused person was convicted of theft and sentenced

of the Code of Criminal Procedure. *Empress v. Partab, I. L. R., 1 All., 666,* followed. TAMIZ MANDAL v. UMID KARIGAR I. L. R., 9 Calc., 215

22. ——— Inquiry as to necessity for security—*Criminal Procedure Code, 1872, s. 504*

23. ——— Form of order—*Criminal Procedure Code, 1872, s. 297—Sureties—Order for deposit in cash.*—Where a person, under s. 297 of the Criminal Procedure Code, is ordered to provide security for his good behaviour, the order should, under s. 300, state the number of sureties required from the defendant. The object of the law as to

24. ——— *Order for deposit*

Contra, QUEEN v. KRISTENDRO ROY

[7 W. R., Cr., 30

SECURITY FOR GOOD BEHAVIOUR *—continued.*

25. ———— **Statement of grounds for order**—*Opportunity to comply with order—Criminal Procedure Code, 1872, s. 505.*—On a requisition from the High Court, a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security EMPRESS *v.* DEDAR SIRCAR

[I. L. R., 2 Calc., 384: 1 C. L. R., 95

26. —— **Order for surety to pledge rights in land**—*Illegal order*—An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth R200 was held to be illegal. QUEEN *v.* GANNI . . 7 N. W., 249

27. ———— **Reference to Sessions Judge for confirmation of order when person is unable to give security**—*Criminal Procedure Code (Act V of 1898), ss. 110, 123—Statement of grounds for order.*—The Sessions Judge, in confirming [illegible]

[I. L. R., 27 Calc., 656

28. —— **Order with arbitrary condition imposed** — *Criminal Procedure Code, 1872, ss. 505, 516—Sureties.*—In making an order for security to keep the peace under s. 505, Criminal Procedure Code, 1872, a Magistrate had no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.*, a [illegible] valid and reasonable ground. IN THE MATTER OF THE PETITION OF NARAIN SOOBODDHEE

[22 W. R., Cr., 37

29. ———— No conditions and limitations can be imposed upon persons ordered to give security under s 118 of the Code. IN THE MATTER OF JHOJHA SINGH *v.* QUEEN-EMPRESS

[I. L. R., 24 Calc., 155

30. - - **Ground for refusing surety** —*Criminal Procedure Code (Act V of 1898), s. 123, cl. (2)—Pleader whether he may be heard in a reference under that section.*—A Sessions Judge is bound to hear a pleader who may appeal on behalf of a person in a [illegible]

ground that he lives at a distance from the accused. ABINASH MALAKAR *v.* EMPRESS 4 C. W. N., 797

31. ———— **Object of demanding security**—*Criminal Procedure Code (Act X of 1882), ss. 110 et seq.—Discretion of Magistrate in accepting or refusing sureties tendered.*—The object of requiring security to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is therefore reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they would exercise any control over the man for whom they were willing to stand surety *In the matter of the petition of Narain Sooboddhee, 22 W. R., Cr., 37,* not followed. QUEEN-EMPRESS *v.* RAHIM BAKHSH

[I. L. R., 20 All., 206

32. **Order for security and imprisonment in default**—*Illegal order—Criminal Procedure Code, 1861, ss. 296, 301.*—Where a Magistrate required security from persons for their good behaviour, under s 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment,—*Held* that the order was illegal, s. 301 requiring that they should be committed to prison until they furnish the security demanded In fixing the amount of security, the Magistrate should not go beyond a sum for which there is a fair probability of the defendants being able to find security. ANONYMOUS

[4 Mad., Ap., 47

33. ———— *Criminal Procedure Code (Act X of 1882), s. 118—High Court's power of interference when the amount of security is excessive—Magistrate's discretion, Exercise of.*—A Magistrate ordered the accused to execute a bond for R500 for his good behaviour for one year and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison The High Court, being of opinion that the amount of the required security was excessive and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction, and reduced the amount. QUEEN-EMPRESS *v.* RAMA

[I. L. R., 16 Bom., 372

34. ———— **Power of Magistrate to cancel security-bond once accepted**—*Criminal Procedure Code (Act X of 1882), ss. 109, 122, 125*—When a surety offered by a person for good behaviour has once been accepted, a Magistrate has no power subsequently to cancel the security-bond, though he might be of opinion that such surety is an unfit person. EMPRESS *v.* RAM LAL ACHARJEA

[1 C. W. N., 394

35. ———— **Second order for security without further proof**—*Criminal Procedure Code, 1861, Ch. XIX.*—Where a person is confined, in default of giving security for his good behaviour, under Ch. XIX of the Code of Criminal Procedure,

SECURITY FOR GOOD BEHAVIOUR —*continued.*

a second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling IN RE JUSWUNT SINGH

[1 Ind. Jur., N. S., 301: 6 W. R., Cr., 18

See MAHOMED ABDUL BARI *v.* EMPRESS

[4 C. W. N., 121

36. ——— **Further proceedings under s. 110 of Code of Criminal Procedure**—*Fresh information—Accused person—"Discharge"—Criminal Procedure Code, s. 437.*—A further inquiry

sary to institute further proceedings, he is competent to do so under the law on fresh information received. Proceedings under s 110 cannot be regarded as on a complaint, nor can they be regarded as a case in which any "accused" person has been discharged, for the terms "accused person" and "discharge" in s 437 of the Code clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch XIX of the Code. QUEEN-EMPRESS *v.* IMAN MUNDAL

[I. L. R., 27 Calc., 662

37. ——— **Form of security-bond**—*Criminal Procedure Code, 1861, ss 305, 306—Forfeiture of bond.*—Where sureties who were required to show cause, under s. 305 of the Code of Criminal

PHEAR, J —Although the form of security-bond given in form (F) of the appendix combines two bonds,—namely, one for the principal and one on the part of the sureties, the provisions even of s 300 would be complied with if these two bonds were upon two pieces of paper instead of one. IN THE MATTER OF THE PETITION OF BRINDABUN CHUNDER DASS IN THE MATTER OF THE PETITION OF TARINEE CHURN MOZOOMDAR . . . 19 W R, Cr., 29

38. ——— **Procedure**—*Power of Sessions Judge after acquittal—Information to Magistrate as to taking security from accused.*—If a Sessions Judge be of opinion that a person acquitted by him ought to give security for future good behaviour,

39. ——— *Suspicion—Production of witnesses—Bail* —A person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him It is not sufficient to say generally that there is suspicion. He should be

SECURITY FOR GOOD BEHAVIOUR —*continued.*

asked to produce his witnesses or offered assistance to procure their attendance. He should be admitted to bail A Magistrate is not competent to refuse bail unless the law sanctions such refusal. IN THE MATTER OF KOOKOR SING . 1 C. L. R., 130

40. ——— *Criminal Procedure Code, 1861, s. 296—Examination of witnesses.*—In proceedings taken against a person to obtain security for good behaviour under s. 296 of the Criminal Procedure Code, the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross-examine them. QUEEN *v.* SHUNKUR . 2 N. W., 406

QUEEN *v.* NURSINGH NARAIN

[2 B. L. R., A. Cr., 7 note: 10 W. R., Cr., 1

MAGHAN MIRA *v.* CHAMMAN TELI

[2 B. L. R., A. Cr., 7: 10 W. R., 46

41. ——— *Opportunity to accused of cross-examining witnesses and calling witnesses.*—In an inquiry under Ch XIX of the Criminal Procedure Code, 1861, it was held that the

42. ——— *Evidence—Previous trial for dacoity—Criminal Procedure Code, 1861, s. 296.*—Where a person was adjudicated to be a person of notorious bad character, under s. 296,

43 ——— *Criminal Procedure Code (1882), ss. 118 and 123—Power of Sessions Judge to remand—Taking further evidence—Conditions and limitations imposed upon persons required to give security.*—Under s. 123 of the Criminal Procedure Code, a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself IN THE MATTER OF JHOJHA SINGH *v.* QUEEN-EMPRESS . . I. L. R., 24 Calc., 155

44. ——— *Criminal Procedure Code (1882), ss 110 and 117—Transfer of criminal case—Criminal Procedure Code, s. 526.*—Where a Magistrate instituting proceedings against a person under s 110 of the Code of Criminal Procedure has "acted" within the meaning of s 117 of the Code, no order can be made subsequently under s. 526 of the Code transferring the case from his Court. IN THE MATTER OF THE PETITION OF GURDAR SINGH . I. L. R., 19 All., 291

45. ——— *Sentence of imprisonment—Criminal Procedure Code, 1861, s 296—Illegal direction.*—A direction annexed to a sentence of imprisonment, under s. 448 of the Penal Code, that the convict be brought up at the expiration of

SECURITY FOR GOOD BEHAVIOUR —*concluded.*

the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorized by s. 296 of the Criminal Procedure Code. Reg. v. Krishnaji Bapuji Gaikavad . . . . . 3 Bom., Cr., 39

48. ———— *Criminal Procedure Code (1882), ss 118, 121, 514, sch. V, form No. XLVI—Security for good behaviour—Conviction of principal—Forfeiture of bond—Mode of proving conviction.*—Where a person has given a security-bond under s. 118 of the Code of Criminal

surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal. Queen-Empress v. Man Mohan Lal

[I. L. R., 21 All., 86

SECURITY FOR PAST LOAN.

See Bank of Bengal . 7 B L. R., 653

SENTENCE.

SENTENCE—*continued.*

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[I. L. R., 9 Calc., 513
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14 W. R; Cr., 18
1 N. W., Ed. 1873, 302
1 B. L. R., A. Cr., 3
3 Bom., Cr., 15
7 Bom, Cr., 35
I. L. R., 16 Calc., 799
I. L. R., 20 Calc., 687
I. L. R., 20 Bom., 145

See Arms Act (XXXI of 1860).
[I. L. R., 1 Bom., 308
5 Mad., Ap., 2

See Compensation—Criminal Cases—For Loss or Injury caused by Offence . . 2 C. L. R., 507
[I. L. R., 22 Calc., 139
I. L. R., 19 Mad., 238

See Compensation—Criminal Cases—To Accused on Dismissal of Complaint.
[2 C. L. R., 507
I. L. R., 21 Calc., 979
I. L. R., 22 Calc., 586
I. L. R., 18 All., 96
I. L. R., 19 All., 73

See Cases under Fine.

See Judgment—Criminal Cases.
[I. L. R., 21 Calc., 121
I. L. R., 23 Calc., 502

See Maintenance, Order of Criminal Court as to . 6 Mad., Ap, 23
[I. L. R., 8 Mad., 70
I. L. R., 9 All., 240
I. L. R., 22 Calc., 291
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See Prisoner . 7 Bom, Cr., 31
[7 W. R., Cr., 38

See Reformatory Schools Act, 1876, s. 22 . . I. L. R., 15 All., 208

See Reformatory Schools Act, 1897.
[I. L. R., 20 All., 158, 159, 160
3 C. W. N., 576
I. L. R., 21 All., 391

See Review—Criminal Cases
[4 Mad., Ap., 19
5 Mad., Ap., 18, 20
6 Mad, Ap., 8
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I. L. R., 14 Calc., 42

See Revision — Criminal Cases—Commitment . I. L. R., 16 Bom., 580

See Cases under Revision—Criminal Cases—Sentences.

See Cases under Whipping.

SENTENCE—*continued*.

——— Alteration of—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.
[I. L. R., 8 All., 120
I. L. R., 23 Calc., 975

See SESSIONS JUDGE, JURISDICTION OF.
[5 Bom., Cr., 22, 24
1 Bom., 139
I. L. R., 18 Bom., 751
I. L. R., 18 All., 301

——— Enhancement of—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.
[I. L. R., 18 All., 301
I. L. R., 18 Bom., 751
I. L. R., 24 Calc., 316, 318 note
I. L. R., 22 Bom., 761

See CRIMINAL PROCEDURE CODES, s. 380
[I. L. R., 4 Bom., 239

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 1 Mad., 54

See SESSIONS JUDGE, JURISDICTION OF.
[4 Mad., Ap., 2
5 Mad., Ap., 1
I. L. R., 18 Bom., 751
I. L. R., 18 All., 301

——— of death, Confirmation of—

See CRIMINAL PROCEDURE CODES, s. 376 (1872, s. 288) . I. L. R., 1 Bom., 639
[19 W. R., Cr., 57
2 C. W. N., 49

1. GENERAL CASES.

1. ——— Obligation to pass sentence on conviction—*Duty of Magistrate.*—Where a Magistrate convicts a person of an offence, he is bound to pass some sentence, if only a nominal one. ANONYMOUS . . . 4 Mad., Ap., 66

2. ——— The law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code. DEWAN SINGH *v.* QUEEN-EMPRESS . . I. L. R., 22 Calc., 805

3. ——— Principals and abettors—*Abetment of same offence ...*

QUEEN *v.* RAMNARAIN JOSH 4 W. R., Cr., 37

4. ——— *Registration Act, 1866, s. 94. Abatement of offence under.*—Under s. 94, Act XX of 1866, an abettor could be punished more severely than his principal could be. QUEEN *v.* GOPAL PROSAUD SEIN . . 8 W. R., Cr., 16

5. ——— Ground for passing lighter sentence—*Difference between opinions of Judge and jury.*—A difference of opinion between the

SENTENCE—*continued*.

1. GENERAL CASES—*continued*.

Judge and the jury is no ground for the Judge passing a lighter sentence than he would otherwise have done. (*Per* JACKSON, J.) QUEEN *v.* GHOLAM MUSTUFFA . . . . 3 W. R., Cr., 29

6. ——— Ground for mitigation of sentence—*False evidence.*—Discussion as to the extent of punishment to be passed on certain raiyats who, in a case of criminal trespass brought by an indigo planter, falsely swore that cotton, and not indigo, had been raised on the land in question during the past year. Punishment reduced. SETON-KARR, J., would have reduced the punishment still more for reasons given. QUEEN *v.* DHURRANI DUTT RAI
[8 W. R., Cr., 7

7. ——— Punishment f...

... substantive offence. QUEEN *v.* DHOONDA BHOOYA
[8 W. R., Cr., 85

8. ——— False evidence—*Simple misstatement.*—A deliberate misstatement made in a Court of justice, whether it tends to endanger the life and property ...

... where the prisoner pleads guilty, and throws himself on the mercy of the Court. QUEEN *v.* GURJOON AHEER . . . 7 W. R., Cr., 37

9. ...

... Court of Session), the High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate. REG. *v.* HANMAPA BIN MALAPA
[7 Bom., Cr., 37

10. ——— Taking illegal gratification ...

[16 W. R., Cr., 74

11. ——— Kidnapping—*Maximum sentence.*—The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. QUEEN *v.* BHOODREA . . . . 8 W. R., Cr., 3

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

12. ———— Measure of punishment—*Murder—Severity of sentence, Mitigation of.*—Where a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation *for life, the High Court reduced the sentence to ten* years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country QUEEN *v.* HOSSEIN ALLY . 7 W. R., Cr., 47

13. ———— *Rape—Circumstances for consideration.*—The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female QUEEN *v.* JHANTAH NOSHYO [6 W. R., Cr., 59

14. ———— *Rioting with deadly weapons*—In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. QUEEN *v* MOORUT MAHTON . 8 W. R., Cr., 3

15. ———— *Rioting and un-*

[illegible]

16. ———— Sentence on alternative finding—*Penal Code, s. 72.*—An alternative finding is perfectly legal. The sentence should be as provided by s. 72, Penal Code QUEEN *v.* TARINEE MYTEE . 7 W. R., Cr., 13

17. ———— Contemporaneous sentences.—Contemporaneous sentences are not justified by the Penal Code QUEEN *v.* MOHESH CHUNDER SIRCAR . . 3 W. R., Cr., 13

18. ———— *Sentence under Penal Code and under special law.*—A sentence under the Penal Code and also under a special law in respect of one and the same offence is illegal. QUEEN *v.* HUSSUN ALI . . . 5 N. W., 49

19 ———— *Simultaneous conviction for offence, and order for security for good behaviour.*—When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound. QUEEN *v.* SHONA DAGEE [24 W. R., Cr., 13

20. ———— Sentence running from period prior to conviction—*Illegal sentence.*—A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction QUEEN *v.* BUL SINGH . . . 4 N. W., 8

21. ———— Commencement of sentence where appeal is brought—*Date of committal to jail.*—Where on the appeal of Government an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of their arrest or of the sentence on the appeal. EMPRESS *v.* MAHUDDI . . 6 C. L. R., 349

22. ———— Sentence to commence at future date—*Conviction, and admission to bail* [illegible]

[illegible] mission to bail did not make the previous sentence one to commence at a future time, and consequently illegal. The case of *Kishen Chunder Bhuttacharjee, 3 B L. R., A. Cr., 50. 12 W. R., Cr., 47,* distinguished. IN THE MATTER OF OKHOY KUMAR [7 C. L. R., 393

23. ———— Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore—*Criminal Procedure Code (1882), s. 11—Power of Magistrate.*—It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore. QUEEN-EMPRESS *v* VENKATARAM JETTI I. L. R., 20 Mad., 444

24. ———— Order for punishment on contingent failure to perform work—*Act XIII of 1859, s. 2.*—An order of a Magistrate passed under s. 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make such an order until the failure had occurred and been proved before him. REG. *v.* JOMA BIN BALU . 4 Bom., Cr., 37

25. ———— Sentence under repealed Act—*Cattle Trespass Acts, III of 1857 and I of 1871.—Conviction under wrong Act.*—Where a

[illegible]

27. ———— Passing sentence before judgment—*Criminal Procedure Code (Act X of 1882), ss. 366, 367.*—A sentence which has been passed or a direction that an accused be set at liberty

SENTENCE—*continued.*

1. GENERAL CASES—*concluded.*

which has been given at a sessions trial before the judgment required by s. 367 of the Code of Criminal Procedure, 1882, has been written, is illegal QUEEN-EMPRESS *v.* HARGOBIND SINGH [I. L. R., 14 All., 242

28. ——— **Imposition of non appealable sentences.**—The imposition by Magistrates of non-appealable sentences in cases in which the facts are such as to render it very desirable that an appealable sentence should be passed, disapproved of. JATRA SHEKH *v.* REAZAT SHEKH [I. L. R., 20 Calc., 483

2 CAPITAL SENTENCE.

29. ——— **Sentence on conviction of murder**—*Sentence of death or transportation*—On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life. QUEEN *v.* BANI DOSS [14 W. R., Cr., 2

QUEEN *v.* JAMAL 16 W. R., Cr., 75

30. — — *Discretion of Court as to punishment after conviction of murder.*—

31. ——— *Duty of Magistrates.*—Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence QUEEN *v.* SHIB NARAIN PALODHEE [7 W. R., Cr., 33

32 **Justification for sentence of death**—

demning the convict to death. QUEEN *v.* NGA SHOAY-DE [19 W. R., Cr., 68

33. — — **Conviction of person under transportation of murder**—*Penal Code, s. 303*

of the Penal Code is death QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR 19 W. R., Cr., 45

34. ——— **Pregnancy of accused convicted of murder**—*Suspension of sentence.*—

[15 W. R., Cr., 66

SENTENCE—*continued.*

2 CAPITAL SENTENCE—*concluded.*

35. ——— *Suspension of sentence.*—When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery. QUEEN *v.* GHURBHURNEE W. R., 1864, Cr., 1

QUEEN *v.* TEPOO . . . 3 W. R., Cr., 15

Since expressly provided for by s 306, Criminal Procedure Code, 1872, and s 382 of Act X of 1882.

3 CUMULATIVE SENTENCES.

36 — **Sentencing twice for same offence**

37. ——— **Cases where same acts are the basis of two charges and convictions**—*Sentence on each charge.*—Where substantially only one offence has been committed, and the acts which are the basis of

are the sa

conviction

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RADHAKAN

QUEEN *v.* CHUNDER KANT LAHOREE [12 W. R., Cr., 2

38. ——— **Conviction on several charges forming substantially one offence**—*Criminal Procedure Code, 1861, s. 46*—Where a

[2 Bom., 132: 2nd Ed., 126

39. ——— *Improper sentence*—Where a person, though charged under two heads, was found guilty of what was substantially but one offence,—*Held* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed. REG. *v.* ZORA KARUBEG 4 Bom., Cr., 12

40. ——— **Acts constituting offence founded on one continuous transaction**—*Sentence for principal offence*—Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. ANONYMOUS [6 Mad., Ap., 47

SENTENCE—*continued.*

3 CUMULATIVE SENTENCES—*continued.*

41. ——— Act coupled with intention —*Same act constituting a less grave offence.*—Where the act of an accused person, coupled with his intention or knowledge, constitutes a graver offence, the circumstance that the same act also answers to the definition of another less grave offence does not [illegible]

42. ——— Conviction of separate offences—*Criminal Procedure Code, 1861, s. 46—Separate sentences to take effect successively.*—Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first, and so on. ANONYMOUS . 4 Mad., Ap., 27

43. ——— Separate sentence to take effect successively.—In a case of several offences under one section of the Penal Code, the proper way is to try the accused under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them On conviction on each of these [illegible]

sentence QUEEN *v* SOBRAI GOWALAH [20 W. R., Cr., 70

44. ——— *Maximum term* [illegible]

45. ——— Conviction of several instances of same offence—*Aggregate sentence for purpose of appeal—Separate sentence on each offence.*—For purposes of appeal, the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence *Semble*—That where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head,—*Held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court. REG. *v.* GULAM ABAS . . . . . . 12 Bom., 147

46. ——— Simultaneous convictions —*Sentence for purposes of appeal—Criminal Procedure Code, 1872, s. 314.*—The aggregate of the sentences passed under s 314 of the Code of Criminal Procedure in a case of simultaneous convictions for several offences must be considered a single sentence for the purposes of confirmation or appeal. REG. *v.* RAMA BEHGOWDA [I. L. R., 1 Bom., 223

47. ——— Separate sentences—*Abetment of abduction and wrongful confinement—Penal Code, ss. 343, 498.*—The prisoners having been sentenced for abetment of abduction of a woman under ss 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343,—*Held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone. QUEEN *v.* ISHWAR CHANDRA JOGEE [W. R., 1864, Cr., 21

48. ——— *Abduction of child to get property from its person—Theft after preparation to cause death—Penal Code, ss. 369, 382.*—Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, etc, (s. 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, etc, within the meaning of that section. QUEEN *v* KASHEE NATH CHUNGO [8 W. R., Cr., 84

49. ——— *Penal Code, s. 369 —Abduction with intent to take moveable property —Second punishment for theft.*—A prisoner tried, convicted, and punished under s 369 of the Penal [illegible]

50. ——— *Penal Code, ss 71, 183, and 353—Resisting taking of property by public servant—Using criminal force to deter public* [illegible]

sentences for each offence was not prevented by s 71 of that Code. QUEEN *v.* JOTAH MOHUN CHUNDER [14 W. R., Cr., 19

51. ——— *Threatening witnesses—Sentence for each offence.*—An accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was held that, if a person at one time criminally intimidates three

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each pers n, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. IN THE MATTER OF GOOLZAR KHAN 9 W. R., Cr, 30

52. ——— *Culpable homicide and being member of unlawful assembly.*—The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed. QUEEN *v.* RUBBEEOOLAH

[7 W. R., Cr., 13

53. ——— *Dacoity with murder—Penal Code, s. 396.*—If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code But he cannot be separately convicted of murder under s 302 and of committing dacoity under s. 395. QUEEN *v.* RUGHOO

[W. R., 1864, Cr., 30

54. ——— *Dacoity and receiving stolen property.*—A person convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* LOCH, *J*) BHYRUB SEAL *v.* QUEEN. QUEEN *v.* BHYRUB SEAL

[W. R., 1864, Cr., 27

QUEEN *v.* ABOOL HOSSEIN 1 W. R., Cr., 48

55. ——— *Rescuing from lawful custody and using criminal force—Penal Code, ss. 224, 225, and 353.*—Where substantially [illegible] charge should not be passed. Where prisoners were [illegible]

QUEEN *v* DINA SHEIKH

[3 B. L. R, A. Cr., 15 note : 10 W. R, Cr., 63

So where prisoners were accused of rioting and using criminal force, it was held only one offence IN THE MATTER OF NILRUTTON SEIN

[16 W. R, Cr., 45

56. ——— *Making false charge—Giving false evidence—Separate offences.*—The offence of making a false charge and the offence of intentionally giving false evidence are not cognate offences or parts of the same offence, but may be punished separately. QUEEN *v.* ABDOOL AZEEZ

[7 W. R., Cr., 59

57. ——— *Penal Code, ss. 71, 193, 211—Concurrent sentences—Criminal Procedure Code (Act X of 1882), s. 35—Enhancement of sentence.*—Where the accused, who was a [illegible] ing a false [illegible] se evidence [illegible] of 1860), and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, [illegible] past conduct, [illegible] concurrently [illegible] adequate and [illegible] ere enhanced [illegible] ent for each offence; and as the two offences were distinct, the High Court directed, under s 35 of the Criminal Procedure Code (Act X of 1882), one sentence to commence after the expiration of the other. *Queen* v. *Abdool Azeez, 7 W. R., Cr., 59,* followed. QUEEN-EMPRESS *v.* PIR MAHOMED

[I. L. R., 10 Bom., 254

58. ——— *Conviction of several offences*—Two prisoners, having been convicted of forgery and other offences, were sentenced each to an aggregate amount of punishment. *Held* that it was an irregularity not to pass a separate sentence under each independent head of the charge. REG. *v.* VINAYAK TRIMBAK

[2 Bom., 414 : 2nd Ed., 391

REG *v.* MHAR TRIKAM 5 Bom., Cr., 3

59 ——— *Distinct offences—Simultaneous sentence.*—Three prisoners were charged with five distinct offences of house-breaking by night, and were sentenced to two years' rigorous imprisonment in each case. *Held* that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously ANONYMOUS

[5 Mad., Ap., 42

60. ——— *Criminal Procedure Code, s 35—"Distinct offences"—Penal Code,* [illegible]

61. ——— *House-breaking and theft.*—If a man break into a dwelling-house at night and steal property therefrom, the crime is in

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*continued.*

its nature one single and entire offence, and should be treated accordingly. QUEEN v. TONAOKOCH [2 W. R., Cr., 63

Under s 457 of the Penal Code. QUEEN v. CHYTUN BOWRA 5 W. R., Cr., 49

JOGEEN PULLEE v. NOBO PULLEE [6 W. R., Cr., 49

IN RE MUSSAHUR DAOUDH . 6 W. R., Cr., 92

62. ——— *House-breaking by night and theft*—A prisoner may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second. QUEEN v. TINCOUREE [W. R., 1864, Cr., 31

63. ——— *House-breaking and theft—Joinder of charges—Limit of conviction—Criminal Procedure Code (Act X of 1872), ss. 452, 454, 455.*—*Held* that, where in the course of one and the same transaction an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge and to designate not only the principal, but the subsidiary, crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where therefore a person who broke into a house by night [illegible]

s. 457 and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380. EMPRESS v AJUDHIA [I. L. R., 2 All., 644

64. ——— *Offence made up of parts—House-breaking and theft—Penal Code, ss. 71, 380, 457.*—S 71 of the Penal Code applies to the case of a person charged with house-breaking under s. 457 and theft committed on the same occasion under s. 380 of the Penal Code. REG. v. ARJUN . . . . 1 Bom., 87

65. ——— *Conviction of several offences—House-breaking to commit theft—Compound offence*—It is competent to a Magis- [illegible]

accused has been convicted, and provided further such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences REG v ANVARKHAN VALAD GULKHAN [9 Bom., 172

66. ——— *House-breaking and theft—Penal Code, ss. 380 and 457—Simultaneous convictions for separate offences.*—In a case of conviction of house-breaking by night, in order to commit theft, under s. 457, and theft, under s. 380 of the Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence REG v TUKAYA BIN TAMANA [I. L. R., 1 Bom., 214

67. ——— *Criminal Procedure Code, ss 35, 235—Penal Code, ss. 379, 380, 454—House-breaking in order to the commission of theft—Theft—Separate convictions and sentences.*—Under ss. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 344 of the Penal Code for [illegible]

been to commit him to the Court of Session under ss. 454 and 75 of the Code. But a Sessions Judge trying such a case under s 379 and s. 454 would [illegible]

[I. L. R., 10 All., 140

68. ——— *Criminal Procedure Code, s. 35—Penal Code, ss. 71, 72, 352, 426, 457—Separate convictions for different offences in* [illegible]

[I. L. R., 11 Mad., 50

69. ——— *Criminal Procedure Code, ss. 35 and 235—Penal Code (Act XLV of 1860 and VIII of 1882), ss. 71, 380, 457—Simultaneous convictions for several offences*—The accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house punishable under s. 380 of the Penal Code (Act XLV of

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

1860),—the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of R100, or, in default of payment, three months' further rigorous imprison-

[illegible]

gistrate who tried the case The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment *Held* that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (Act XLV of

[illegible]

Per JARDINE J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s 235 of the Criminal Procedure Code of 1882, must now be sought for in s 71 of the Penal Code (Act XLV of 1860) and in s. 35 of the Criminal Procedure Code (Act X of 1882. QUEEN-EMPRESS *v.* SAKHARAM BHAU . . I. L. R., 10 Bom., 493

70. ———————— *Lurking house-trespass and theft—Penal Code, ss. 380 and 454.*—Discussion as to whether cumulative punishment under ss. 454 and 380 is legal for lurking house-trespass and theft. QUEEN *v.* MINA NUGGERBHATIN [3 W. R., Cr., 19

71. ———————— *Penal Code (Act XLV of 1860), s. 71—Criminal Procedure Code (Act V of 1898), s 35—Conviction of several offences at one trial.*—Where a person commits house- [illegible] may [illegible] these [illegible] rovi- [illegible] 860) [illegible] the offences in question and not a separate one for each offence. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity, and not an illegality, calling for the interference of a Court of appeal or revision. QUEEN-EMPRESS *v.* MALU. QUEEN EMPRESS *v.* NAGU . . I. L. R., 23 Bom., 706

72 ———————— *House-trespass and grievous hurt.*—The prisoner entered a house for the purpose of committing an assault, and in

[illegible]

house-trespass QUEEN *v.* BASSOO RANNAH [2 W. R., Cr., 29

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

73. ———————— *Kidnapping—Taking property from child—Penal Code, ss. 363, 369*—The offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. QUEEN *v.* SHAMA SHEIKH [8 W. R., Cr., 35

74 [illegible]

75. ———————— *Rioting—Unlawful assembly.*—There cannot be a conviction both of "rioting" and of "being members of an illegal assembly" The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. MEELAN KHALIFA *v.* DWARKANATH GOOPTO . . 1 W. R., Cr, 7

76. ———————— *Joining unlawful assembly and rioting with deadly weapon.—Penal Code, ss. 144, 148.*—There is nothing illegal in sentencing a prisoner for both offences of joining an unlawful assembly armed with a deadly weapon (s. 144), and rioting armed with a deadly weapon, though the former is almost merged in the latter offence. SREEKISSEN *v.* JUGLAL [9 W. R, Cr., 5

77. ———————— *Rioting armed* [illegible]

DURZOOLLA . . . . 9 W. R., Cr., 33

78 [illegible]

and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s 148. QUEEN *v.* CALLACHAND [7 W. R., Cr., 60

79. ———————— *Conviction of rioting and causing hurt by dangerous weapons—Distinct offences—Separate charges—Penal Code, ss. 71, 148, 149, 324—Act X of 1882 (Criminal Procedure Code), ss. 35, 235—Act X of 1872 (Criminal Procedure Code), ss. 314 454—Act VIII of 1882, s. 4.*—The offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

the hurt caused to each of the persons injured. *A* and *B* were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they

the prisoners were charged did not fall within the

Procedure Code the several sentences passed were strictly legal. LOKE NATH SIRCAR *v.* QUEEN-EMPRESS . . I. L. R., 11 Calc., 349

80. ——— *Separate convic-*

one of the accused of an offence under s. 324 in

offence under the *first sub-section* of s. 235 of the Code of Criminal Procedure *Held* further that,

of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

as amended by s. 4 of Act VIII of 1882, which limit had not been exceeded in the present case. IN THE MATTER OF CHANDRA KANT BHATTACHARJEE. CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS . . . . I. L. R., 12 Calc., 495

81. ——— *Penal Code (Act*

82. ——— *Penal Code Amendment Act (VIII of 1882), s. 4—Offence made up of several offences—Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235—*

causing grievous hurt. EMPRESS *v* RAM PARTAB
I. L. R., 6 All., 121

not exceed that which may be awarded for the graver offence *Quære*—Whether separate convictions under ss 147 and 324 of the Penal Code are legal. IN THE MATTER OF THE PETITION OF JUBDUR KAZI. EMPRESS *v.* JUBDUR KAZI I. L. R., 6 Calc., 718

S. C. IN RE JUBDUR KAZI . 8 C. L. R., 390

84. ——— *Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235*

and three months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s 325. *Held* by PETHERAM, *C.J.*, and STRAIGHT and TYRRELL, *JJ.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*continued*.

establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal *Queen-Empress* v. *Ram Partab, I. L. R., 6 All., 121*, distinguished. *Per* BRODHURST, *J.*, that the evidence showed that only one of the three prisoners had caused grievous

Code does not apply merely to the case of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code. QUEEN-EMPRESS v. RAM SARUP [I. L. R., 7 All., 757

85. ——— *Criminal Procedure Code, 1882, s. 35 and s. 235—Convictions of rioting and causing grievous hurt—Offences distinct—Penal Code (Act VIII of 1882), s. 4—Penal Code, ss. 147, 325.*—The offences of rioting, of voluntarily causing hurt, and of voluntarily causing

of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and under s. 35 a separate sentence may be passed in respect of each. *Queen-Empress* v *Ram Partab, I. L. R, 6 All., 121*, dissented from. QUEEN-EMPRESS v. DUNGAR SINGH . I. L. R., 7 All., 29

86. ——— *Penal Code, s. 71—Criminal Procedure Code, ss 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences*—On the 8th August

by an order of Government, which was communicated to him on the 8th September. On the 9th September the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and on the 10th September convicted the

s. 148 of the Penal Code, held that the sentences

SENTENCE—*continued.*

3 CUMULATIVE SENTENCES—*continued.*

(PETHERAM, *C.J*, and BRODHURST, *J.*, dissenting) that the sentences passed by the Magistrate were legal. *Per* OLDFIELD and DUTHOIT, *JJ*, that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* BRODHURST, *J.*, that the sentences passed by the Magistrate were, as a whole, illegal, that if he had convicted the accused under s 148 of the Penal Code, his order would,

offence of causing grievous hurt. *Empress* v. *Dungar Singh, I. L. R., 7 All., 29*, referred to. QUEEN-EMPRESS v. PERSHAD [I. L. R., 7 All., 414

87. ——— *Penal Code, s. 71 and ss. 147, 149, and 325—Rioting—Grievous hurt committed in the course of riot and in prosecution of the common object—Distinct offences—Separate sentences—Act VIII of 1882, s. 4—Criminal Procedure Code, s 235.*—S. 149 of the Penal Code creates no offence, but was intended to make it

assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, *M*, with his own hand, caused grievous hurt. *M* and other members of the assembly, as to whom it did not appear whether or not any of them

exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325 *Held* also that the riot could not in any of the cases be consi-

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

I. L R., 7 All., 414; Chandra Kant Bhattacharjee

[I. L. R., 6 All., 645

88 ——— *Separate sentences for rioting and grievous hurt—Penal Code, ss. 71 (para. 1), 144, 147, 148, 334—Act VIII of 1882, s 4—Criminal Procedure Code (Act X of 1882), s. 35.—Per curiam* (TOTTENHAM, J, dissenting).—Separate sentences passed upon persons for the

89. ——— Separate sen-

422, followed HRIDOY MONDAL *v.* JAGANANDA DAS [4 C. W. N., 245

90. ——— *Rioting — Distinct offences—Conviction for rioting and causing hurt and grievous hurt—Separate conviction for more than one offence when acts combined form one offence—Abetment of grievous hurt during riot—*

were also charged with, and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss 147 and 323 of the Penal Code. *Held* that the sentences were legal During

caused the

them assault

s. 325 read

THE MATTER

QUEEN-EMPRESS IN THE MATTER OF THE PETITION OF KALI ROY *v.* QUEEN-EMPRESS [I. L. R., 16 Calc, 725

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

91. ——— *Rioting and theft—Common object of unlawful assembly being theft—Separate sentences, Legality of—Penal Code (Act XLV of 1860), ss 71, 147, 149, 379.*—When persons are charged with rioting and theft and the common object of the unlawful assembly by which the rioting was caused is theft and they are convicted

GOPAL LAL . . . . 3 C. W. N., 761

92. ——— *Rioting armed with deadly weapons—Separate and distinct offences—Causing hurt and grievous hurt—Resistance and obstruction to police—Penal Code, ss. 71, 148, 152, 332, 333.*—Eight persons, who were charged

Alipore, dated 20th April 1891, and also by means

years' rigorous imprisonment for that offence The

years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It

sentences under s 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

sentence provided for either of the offences *Held*, as regards (1), that as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the [illegible]

tuted the essence of the offence under s 152 *Held*, as regards (3), that the separate sentences passed under [illegible]

[I. L. R., 19 Calc, 105

93.——————— *Penal Code, ss 71, 148, 149, 326—Separate sentences for rioting and grievous hurt* —When a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s 149 of the Penal Code, it is illegal to pass two sentences, one for riot and one for hurt But in such a case the two sentences would be legal, provided the total punishment does not exceed [illegible]

Sarup, I L. R., 7 All, 757, approved QUEEN-EMPRESS *v.* BANA PUNJA . I. L. R., 17 Bom, 260

94.——————— *Personating public servant—Extortion—Conviction for each offence proved necessary—Separate sentences—Sentence necessary upon each conviction—Penal Code (Act XLV of 1860), ss. 71, 170, 383—Criminal Procedure Code, ss 35, 235* —Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not, and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction Under s 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss 170 and 383 of the Penal Code, committed in the same transaction, it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion complained of *Held* that the first [illegible]

acts complained of are proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s 383; that in the present case the former offence was completed before the latter had begun; and that separate sentences for

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*concluded.*

each offence were therefore not illegal. QUEEN-EMPRESS *v.* WAZIR JAN I. L. R., 10 All., 58

95 [illegible]

[illegible] Mad., Ap, 14

96. —— —— *Theft from two persons in same room.*—Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft QUEEN *v.* MONEERAH 11 W. R., Cr., 38

97. ——————— *Theft—Receiving stolen property.*—A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property QUEEN *v.* MUDDUN ALLY . . . . 1 W. R., Cr., 27

QUEEN *v.* SREEMUNT ADUP . 2 W. R., Cr., 63

QUEEN *v.* SEEBCHURN HAREE 11 W. R., Cr., 12

QUEEN *v.* SHEEB CHUNDER HAREE [11 W R., Cr., 12 note

98. ——————— *Theft and mischief—Double sentence.*—A double sentence for theft and mischief is illegal and improper BICHUK AHEER *v.* AUHUCK BHOONEEA 6 W. R., Cr., 5

99. ——————— *Mischief and theft—House-breaking and theft.*—Separate convictions and sentences under ss. 429 and 379 and under ss. 457 and 380 of the Penal Code were set aside, and the convictions under s 429 in the former case, and under s 457 in the latter, allowed to stand. QUEEN *v.* SAHRAE . . 8 W. R., Cr., 31

100. ——————— *Criminal trespass—Mischief—Criminal Procedure Code, 1872, s. 454* —Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief,—*Held* that such person could not, under cl. iii of s 454 of Act X of 1872, receive a punish- [illegible]

EMPRESS *v.* BUDH SINGH I. L. R., 2 All., 101

101. ——————— *Separate offences—Penal Code, ss. 143, 253.*—A cumulative sentence under s 143 of the Penal Code (being a member of an unlawful assembly), and under s 253 (using criminal force against a public servant), was upheld by the High Court in this case. IN THE MATTER OF GOBIND CHUNDER ROY 16 W. R., Cr., 70

4. FINE

102 ——— Specific fine on each prisoner—*Trial of several prisoners.*—A sentence

SENTENCE—*continued.*

4. FINE—*concluded.*

of fine must impose a specific fine on each prisoner ANONYMOUS . . 5 Mad., Ap., 5

103. —— — Wrongful confinement—*Penal Code, s. 344.*—Fine alone is not a legal sentence for a prisoner convicted under s. 344 of the Penal Code. REG. v. BAHIRAJI BIN KRISHNAJI [1 Bom., 39

104.———— Separate offences—*Alternative sentence allowed only in one.*—Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. QUEEN v. BHOOBUN MOHUN [11 W. R., Cr., 39

105. ——— Offence under Act XIX of 1838, s. 13—*Omission of owner of harbour craft to produce certificate of registry.*—The Legislature, when it enacted in s 13 of Act XIX of 1838 that persons who committed certain acts should be "subject

rupees EMPRESS v. MHASNYA RAMA [I. L. R., 7 Bom., 280

106. ———— Theft in dwelling-house—*Penal Code, s. 380—Imprisonment.*—On conviction for theft in a dwelling under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. DULLOO v ZAINAH BEBEE . 16 W. R., Cr., 17

107.

prisonment can be imposed. ANONYMOUS [6 Mad., Ap., 37

108.———— Transportation with fine—*Levy of portion of fine.*—When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. ANONYMOUS . 5 Mad., Ap., 44

109 ————

v. TANGAVELU CHETTI . I. L. R., 22 Mad., 153

SENTENCE—*continued.*

5. IMPRISONMENT.

(a) IMPRISONMENT GENERALLY.

110. ———— False statement on oath to public servant—*Penal Code, s. 181—Illegal sentence.*—A sentence under s. 181 of the Penal Code which awards no term of imprisonment is illegal. ANONYMOUS . . 4 Mad., Ap., 18

111. ———— Accumulation of sentences of imprisonment—*Criminal Procedure Code, 1861, s. 46*—

reference only to sentences passed simultaneously, or passed upon charges tried simultaneously. QUEEN v PUBAN . . 7 W. R., Cr., 1

112. — — - Concurrent sentences—*Criminal Procedure Code, 1882, s 35.*—Under s 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. QUEEN-EMPRESS v. WAZIR JAN [I. L. R., 10 All., 58

113. ———— *Criminal Procedure Code (Act X of 1882), s. 35—Sentence—Concurrent sentences*

..., 10 All., 58, referred to. DAITARI DAS v QUEEN-EMPRESS . I. L. R., 25 Calc., 557

114. — — — — *Criminal Procedure Code*

time, to direct that the sentences imposed in respect of such offences shall run concurrently QUEEN-EMPRESS v. ISHRI . . I. L. R., 20 All., 1

115. ———— Criminal Procedure Code, 1872, s. 309—*Penal Code, s 65.*—S. 309 of the Criminal Procedure Code did not extend the period of imprisonment which might be awarded by a Magistrate under s. 65 of the Penal Code; it only regulated the proceedings of Magistrates whose powers were limited. EMPRESS v DARBA [I. L. R., 1 All., 461

116. — —— Commencement of sentence

ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorize a sentence passed by him to take

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

S. C. IN THE MATTER OF KISHEN SOONDER BHUTTACHARJEE . . 12 W. R., Cr., 47

117. ——— Imprisonment in lieu of whipping—*Criminal Procedure Code, s. 395—Infliction of fine in lieu of whipping.*—A Court

s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine QUEEN-EMPRESS v. SHEODIN . I. L. R., 11 All., 308

Judge, referred to cases in which the sentence

119. ——— Attempt to commit offence—*Penal Code, s. 511.*—The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of a judicial proceeding cannot extend beyond one half of seven years QUEEN v. SOONDUR PUTNAICK 3 W. R., Cr., 59

120. ——— Offence under Act XIII of 1859, s. 2—*Form of sentence.*—A sentence of imprisonment should not be announced beforehand in the order directing performance of the contract in a case under Act XIII of 1859, s. 2, but should follow on a complaint of non-compliance ANONYMOUS . . 6 Mad., Ap., 24

Penal Code, a sentence of imprisonment cannot be passed under s. 163 of the Code of Criminal Procedure. IN THE MATTER OF BUHRAM KHAN [10 W. R., Cr., 47

122. ——— Dacoity—*Penal Code, s. 395.*—A sentence of fourteen years' imprisonment cannot be passed for dacoity under s. 395 of the Penal Code. QUEEN v. HAROO RUJWAR [13 W. R., Cr., 27

123. ——— Disobedience to order of public servant—*Rigorous imprisonment—Penal Code, s. 188.*—A sentence of rigorous imprisonment passed by a Magistrate, under s. 188 of the Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorized REG v. NARAYANRAV DIN MAHADEVRAV CHAVAN 3 Bom., Cr., 32

124. ——— Giving false evidence—*Penal Code, s. 193—Duty of Court.*—Under s. 193 of the Penal Code, it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment EMPRESS v. KHODAI SINGH . . . 3 C. L. R., 527

125. ——— False evidence to procure acquittal of guilty person—*Measure of sentence.*—*Held* by the majority of the Court that a sentence of five years' imprisonment was not excessive in the

[illegible] W. R., 1864, Cr., 10

126. ——— Deliberately fabricating

127. ——— Grievous hurt—*Penal Code, s. 325—Fine.*—The offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine. QUEEN v. SHARODA PESHAGUR 2 W. R., Cr., 32

QUEEN v. MENAZOODIN . . 2 W. R., Cr., 33

128. ——— House-breaking—*Whipping—Rigorous imprisonment—Commutation of punishment.*—Upon conviction of the offence of house-break-

illegal. QUEEN v. BANDA ALI [6 B. L. R., Ap., 95 : 15 W. R., Cr., 7

129. ——— Offence under Madras Police Act, 1859, s. 48—*Rigorous imprisonment—Measure of sentence.*—A sentence of rigorous imprisonment under conviction for an offence under s. 48, Act XXIV of 1859, was illegal. ANONYMOUS [5 Mad., Ap., 35

130. ——— Offence under Registration

SENTENCE—*continued.*

5 IMPRISONMENT—*continued.*

had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. LEGAL REMEMBRANCER *v.* RADHOO CHURN ASH. GOVERNMENT *v.* RADHOO CHURN ASH

[18 W. R., Cr., 3

131. ——— **Indefinite period of im-**

132. ——— **Imprisonment in default of giving security for good behaviour**—*Criminal Procedure Code, 1861, s. 296.*—Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under s. 296 of the Criminal Procedure Code for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. QUEEN *v.* TORAL GUJAR 3 N. W., 128

133. ——— **Receiving stolen property**—*Criminal Procedure Code, 1872, s 505—Addition to sentence of order for security for good behaviour*—*P* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft He was sentenced to be whipped, to be rigorously imprisoned, and on the expiration of the term of imprisonment to furnish security for good behaviour. *Held* that the order requiring security should not have formed part of the sentence for the offence of which *P* was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied from the evidence as to general character adduced before him in the case, that *P* was by repute an offender within the terms of s. 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, *P* should be brought up for the purpose of being bound EMPRESS *v* PARTAB

[I. L. R., 1 All., 666

134. ——— **Addition to sentence of further imprisonment in default of engagement to keep the peace**—*Criminal Procedure Code, 1869, s. 280.*—The prisoner was convicted of an offence punishable under s. 307 of the Penal Code In addition to the sentence passed upon him under that section, the Sessions Judge directed, under s. 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of R100 for keeping the peace towards the prosecutor for a period of one year. and in default to undergo simple imprisonment for that period The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. QUEEN *v.* SELLAM . . . . . 6 Mad., 25

SENTENCE—*continued.*

5 IMPRISONMENT—*continued.*

135. ——— **Imprisonment for allowance remaining unpaid after execution of warrant**—*Criminal Procedure Code, s. 488—Maintenance—Wife—Breach of order for monthly allowance—Warrant for levying arrears for several months—Act I of 1868, s. 2, cl. 18—"Imprisonment."*—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 488 of the Criminal Procedure Code has no power to pass a heavier

monthly breach of the order. *Per* STRAIGHT, *J.*—The third paragraph of s. 488 ought to be strictly construed and, as far as possible, construed in favour of the subject. Under the section, a condition precedent to the

cl. (18), of the General Clauses Act (I of 1868), "imprisonment" in s. 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, *J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant QUEEN-EMPRESS *v.* NARAIN

[I. L. R., 9 All., 240

(*b*) IMPRISONMENT AND FINE

136. ——— **Case under s. 21, Cattle Trespass Act, 1871**—*Sentence of fine or imprisonment—Default in payment of compensation.*—It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act, 1871. IN THE MATTER OF KETABDI MUNDUL . . . . 2 C. L. R., 507

137. ——— **Contempt of Court**—*Imprisonment added to fine—Trial of case of contempt.*—Where, in punishing for contempt of Court, the summary procedure sanctioned by s. 163 of the Code of Criminal Procedure, 1861, is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a

138. ——— **Making false charge**—*Penal Code, s. 211—Imprisonment with or without*

SENTENCE—*continued*.

5. IMPRISONMENT—*continued*.

fine—A prisoner convicted under the second clause of s. 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone. REG. v. RAMA BIN RABHAJI . 1 Bom., 34

139 ———— **Conviction under Military Cantonment Act (Bom. Act III of 1867)**—*Simultaneous sentence of fine and imprisonment*—In cases of convictions under ss. 11 and 12 of the Military Cantonment Act (Bom Act III of 1867), a simultaneous sentence of fine and imprisonment in default of the payment of the fine can only be awarded, under s. 14 of the Act, in the event of no property sufficient for the payment of the fine being found. REG v. LADU . . 7 Bom., Cr., 87

140. ———— **Conviction under s. 48, Act XXIV of 1859**—*Mad. Act V of 1865—Procedure to enforce fine.*—Persons convicted under s. 48 of the Police Act (XXIV of 1859) are not [illegible]

ANONYMOUS . . . 7 Mad., Ap., 22

141. ———— **Attempt to commit suicide**—*Penal Code, s. 309.*—A prisoner found guilty, under s. 309 of the Penal Code, of an attempt to commit suicide, must be sentenced to some imprisonment, and not merely to payment of a fine. REG. v. CHANVIOVA . . . 1 Bom., 4

(c) IMPRISONMENT IN DEFAULT OF FINE

142. **Additional imprisonment**—*Rigorous imprisonment.*—Additional imprisonment in default of payment of fine for the offence of dacoity must be rigorous. QUEEN v. SRIMONTO KOTAL . . . . 7 W. R., Cr., 31

143. ———— **Limitation of imprisonment in summary trials**—*Fine—Criminal Procedure Code, 1882, ss. 32, 33, 262—Penal Code, s. 67—Act VIII of 1882.*—In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s. 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment. EMPRESS v. ASGHAR ALI . I. L. R., 6 All., 81

144. ———— **Presidency Magistrates' Act, 1877, s. 167**—*Award of substantive sentence* [illegible] for [illegible] ling [illegible] Act [illegible] g to substantive sentences, and cannot be extended to include an award of imprisonment in default of [illegible]

145. ———— **Committing affray**—*Penal Code, s. 160—Criminal Procedure Code, 1872, s. 309.*—Prisoners were convicted of having committed an offence punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of R25 each, or in default to be rigorously imprisoned for thirty days, the full term of imprisonment under the section. *Held* by a majority of the High Court (KINDERSLEY, J., dissenting) that having regard to the provisions of s. 309 of the Criminal Procedure Code (Act X of 1872), the sentence was legal REG. v. MUHAMMAD SAIB . I. L. R., 1 Mad., 277

146. ———— **Criminal Procedure Code, s. 33**—*Penal Code, s. 65*—S. 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Indian Penal Code *Reg. v. Mahammad Saib, I. L. R., 1 Mad., 277*, was overruled in 1881. QUEEN-EMPRESS v. VENKATESAGADU

[I. L. R., 10 Mad., 165

ANONYMOUS I. L. R., 10 Mad., 166 note

147. ———— **Assault**—*Penal Code, ss. 65* [illegible]

IN THE MATTER OF JEHAN BUKSH

[16 W. R., Cr., 42

148. ———— **Sentence under Bom. Act VII of 1867, s. 31**—*Simple imprisonment.*—Imprisonment in default of payment of a fine inflicted under Act (Bombay) VII of 1867, s. 31, ought to be simple, not rigorous REG. v BECHAR KHUSHAL . . . 5 Bom., Cr., 43

149. ———— **Conviction under Cattle Trespass Act (III of 1857)**—*Fine and imprisonment*—Certain persons were convicted under s. 13, Act III of 1857, and sentenced to fifteen days' imprisonment and a fine, or in default imprisonment for the term of seven days No provision was made in the Act for awarding imprisonment in default of payment of fine, but the prisoners were liable under the section to six months' imprisonment and a fine of R500 The High Court refused to interfere with the sentence passed ANONYMOUS

[5 Mad., Ap., 21

But *see* ANONYMOUS . 7 Mad., Ap., 23

150. ———— **Contempt of Court**—*Criminal Procedure Code, 1861, s. 163—Power of Magistrate.*—The Magistrate convicted the defendant of contempt of Court under s. 163 of the Code of Criminal Procedure, and sentenced him to pay a fine of R10, or in default two days' imprisonment *Held* that the Magistrate had not exceeded his powers. ANONYMOUS . . 6 Mad., Ap., 16

151. ———— **Offence under Income Tax Act (IX of 1869)**—*Power of Magistrate.*—A Magistrate has no power under s. 25, Act IX of 1869, to sentence to imprisonment in default of the payment of the fine imposed for not paying income tax. QUEEN v. NODIAR CHAND KOONDOO

[14 W. R., Cr., 70

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

Chs XII and XVII of the Penal Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences (Ch. XXIII), nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards. QUEEN v. DAMU HAREE . . 21 W. R., Cr., 35

174. ——— *Previous convictions of offence not under Ch. XVII of Penal Code.*—An offender is only liable to enhanced punishment, under s. 75 of the Penal Code, for an offence punishable under Ch. XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN v PURON . . 5 W. R., Cr., 66

175. ——— *Previous offence under Ch XII or Ch. XVII of the Penal Code.*—*Held* that, where a person commits an offence punishable under Ch. XII or Ch. XVII of the

EMPRESS v. MEGHA I. L. R., 1 All., 637

176. ——— *Additional sentence—Sufficiency of sentence.*—The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient. SHEO SARAN TATO v. EMPRESS [I. L. R., 9 Calc., 877

177. ——— *Enhanced punishment—Transportation for seven years—Imprisonment.*—The accused, having been previously convicted of offences punishable, under Ch. XII or Ch XVII of the Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of those chapters punishable with imprisonment which may

178.——— *Further sentence after actual sentence—Penal Code, s. 46*—Where a first class Subordinate Magistrate sentenced a

further imprisonment under s 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. ANONYMOUS 5 Mad., Ap, 3

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

179. ——— *Prisoner having had several previous convictions.*—Where the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under s. 75 of the Penal Code. REG. v. GANU LADU . . 2 Bom., 132: 2nd Ed., 126

180. ——— *Imprisonment—Power of Magistrate—Counterfeiting marks on documents.*—The prisoner was convicted under s. 475 of the Penal Code, and, having been previously convicted of an offence punishable under Ch. XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. *Held* that the Magistrate had power to pass sentence of two years' imprisonment only under s. 75, Penal Code ANONYMOUS . . . . . 6 Mad., Ap., 3

181. ——— *Attempt to commit offence—Penal Code, Ch. XVII, s 457—Lurk-*

person EMPRESS v. RAM DAYAL [I L R., 3 All., 773

182 ——— *Conviction of an attempt to commit theft—Previous conviction of theft*—(MELVILL, J, *dissentiente*)—If a person who has been convicted of an offence punishable, under Ch XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code. EMPRESS v. NANA RAHIM . . I. L. R., 5 Bom., 140

183. ——— and ss 179, 511—*Attempt to commit an offence—Enhancement of sentence for previous conviction—Previous conviction*—A person who has been convicted of the offence of theft (an offence punishable under

CHARAN BAURI . . I. L. R., 14 Calc., 357

184. ——— and ss. 457 and 511—*Attempt to commit house-breaking by night*

R., 3 All., 773; Empress v. Nana Rahim, I. L. R., 5 Bom., 140; Queen-Empress v. Sricharan Bauri, I. L. R., 14 Calc., 357, referred to QUEEN-EMPRESS v AJUDHIA . . . I. L. R., 17 All., 120

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*concluded.*

185 ———— and s. 511—*Attempt to commit an offence after previous conviction.*—S. 75 of the Penal Code does not apply to cases which are confined to s. 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of s. 75. *Queen-Empress v Ajudhia, I. L. R., 17 All., 120,* approved. QUEEN-EMPRESS v. BHAROSA . I. L. R., 17 All., 123

7. SOLITARY CONFINEMENT.

186. ———— s. 74—*Duration of solitary confinement* —Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code, it is to be imposed at intervals. IN THE MATTER OF NYAN SUK METHER . . 3 B. L. R., A. Cr., 49

187.———— s 73—*Criminal Procedure Code, ss. 32 (a), 262— Summary trial.*—It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily. EMPRESS v. ANNU KHAN . . . I. L. R., 6 All., 83

8. TRANSPORTATION.

188. ———— Measure of punishment—*Murder.*—A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. QUEEN v. BHOOTOO MULLICK

[6 W. R., Cr., 85

189. ———— *Reasons for sentence—Criminal Procedure Code, 1861, s. 380* — S. 380 of the Code of Criminal Procedure, 1861, did not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, and it required the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. QUEEN v. DABEE . W. R, 1864, Cr., 27

190. ———— *Unpremedi-* ... premeditated, punishment

... W. R., Cr., 28

191. ———— *Penal Code, ss. 307 and 394—Attempt to murder—Causing hurt in committing robbery.*— Neither under s 307 nor under s 394 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for ten years, with fine. QUEEN v BHAMOUR DOOSADH

[7 W. R, Cr., 41

192. ———— *Waging war with Power in alliance with the Queen* – The punishment for a prisoner convicted of waging war with ...

SENTENCE—*continued.*

8 TRANSPORTATION—*continued.*

sentenced to ten years' transportation, the sentence was held to be illegal. QUEEN v. KEIPA SINGH

[3 W. R., Cr, 16

193. ———— *Killing a wizard* —A sentence of death was commuted into one of transportation for life in the case of a prisoner ...

[6 W. R., Cr., 82

194. ———— *Murder by way of retaliation.*—The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion QUEEN v. TONOO

[6 W. R., Cr., 48

195. ———— *Reckless assault* ...

SHEIKH . . . . . 5 W. R., Cr., 20

196. ———— Commutation of capital sentence—*Likelihood of accident at execution* — Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one for transportation for life. BOODHOO JOLAHA v. EMPRESS . . . . . 2 C. L. R., 215

197. ———— Penal Code, s. 59—*Measure of punishment—Penal Code, s 412* —A sentence of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years. QUEEN v MOHANUNDO BHUNDARY . . . . 5 W. R., Cr, 16

198 ———— *Measure of punishment—False evidence and forgery* —Under s. 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge Therefore where a prisoner was ...

offence, the second sentence was quashed as illegal. QUEEN v GOUR CHUNDER ROY . 8 W. R., Cr., 2

199. ———— *Criminal Procedure Code, 1861, s. 59—Power to commute punish-* ...

SENTENCE—*continued.*

8. TRANSPORTATION—*continued.*

200. ——— *Commutation of sentence after amalgamating two sentences.*—To bring s. 59 of the Penal Code into operation, the punishment awarded on one offence alone must be

QUEEN *v.* TONOORAM 3 W. R., Cr., 44

QUEEN *v.* SHONAULLAH . 5 W. R., Cr., 44

201. ——— *Commutation of sentence—Imprisonment in default of payment of fine.*—S. 59 of the Penal Code does not authorize ... imprison- ... offender in ... *v.* QUEEN ... L. R., ... Mad., 28

202. ——— *Imprisonment —Penal Code, s. 377—Unnatural offence.*—When

203. ——— *Commutation of sentence—Powers under Act XV of 1862, s. 1—Imprisonment or transportation*—An officer who, in the exercise of the powers described in s. 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, had power, under s. 59 of the Penal Code, to commute that sentence into one of transportation for the like period. JACKSON, *J.*, dissented. QUEEN *v.* BOODHOOA

[B. L. R., Sup. Vol., 809: 9 W. R., Cr., 6

s. 59, to transportation for a longer term. QUEEN *v.* MERIAM 1 B. L. R., A. Cr., 5: 10 W. R., Cr., 10

205. ——— *Commutation of sentence—Imprisonment.*—When the law gives the

[W. R., 1864, Cr., 30

206. ——— Successive sentences of transportation—*Criminal Procedure Code, 1861, s. 46.*—A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, was not warranted by

9. WHIPPING.

207. ——— Sentence giving both whipping and imprisonment—*Power of Magistrate—Act XIII of 1856, s. 27.*—Act XIII of 1856, s. 27, gave a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gave both was illegal. QUEEN *v.* FYZO . . . . Bourke, O. C., 269

208. ——— Person convicted of two or more offences under Penal Code—*Imprisonment and whipping.*—When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment and in the other case to whipping under Act VI of 1864. ANONYMOUS . . 5 Mad., Ap, 18

209. ——— Imprisonment in lieu of whipping—*Criminal Procedure Code, s. 395—Court not authorized to inflict fine in lieu of*

Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine. QUEEN-EMPRESS *v.* SHEODIN

[I. L. R., 11 All., 308

210. ——— Ground for sentence—

211. ——— Sentence of imprisonment in lieu of whipping—*Criminal Procedure Code (1882), s. 395—Powers of Magistrate.*—Where a

is sentenced up to a term in excess of the maximum

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES.

(*a*) GENERALLY.

212. ———— Power of High Court to interfere with sentence [illegible]

[illegible]

Code of Criminal Procedure. QUEEN *v.* PURAN [7 W. R., Cr., 1

213. ———— Consolidation by High Court of sentences passed by lower Court— [illegible]

[illegible]

to meet the offence of which the accused has been convicted. HRIDOY MONDAL *v.* JAGANANDA DAS [4 C. W. N., 245

(*b*) ENHANCEMENT

214. ———— Power to enhance—*Criminal Procedure Code, 1861, s. 419—Sessions Judge.* —A Sessions Judge had, under s. 419 of the Criminal Procedure Code, 1861, no authority to enhance a sentence on appeal. QUEEN *v.* BULORAM DOSS [4 W. R., Cr., 20

215. ———— *Acquittal by Sessions Judge and assessors*—Where a Sessions Judge and assessors acquit in a case of murder, but find the prisoner guilty of a minor charge, the Appellate Court has no power to interfere to enhance the punishment awarded. IN THE MATTER OF TOYAB SHAIKH . . 1 Ind. Jur., N. S., 58

216. ———— *Appellate Court* [illegible]

[illegible]

awarded. ANONYMOUS I. L. R., 1 Mad., 54

217. ———— *Criminal Procedure Code, 1872, s. 18—"Modify."*—The word "modify" in s. 18, cl. 2, of the Code of Criminal Procedure did not include the power to enhance a sentence: consequently where an Assistant Sessions Judge passed a sentence of more than three years' imprisonment, the Sessions Judge could not enhance it. IMPERATRIX *v.* RAMA PREMA [I. L. R., 4 Bom., 239

218. ———— *Criminal Procedure Code, 1872, s. 280—Enhancement without* [illegible]

[illegible]

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

219. ———— Exercise of power—*Cri-* [illegible]

[illegible]

220. ———— *Criminal Procedure Code, 1872, s. 280 (1861—69, s. 419).*—The High Court on appeal, being of opinion that the case was one where no circumstances of mitigation were set forth, and where, without any sufficient reason, the Judge had awarded a punishment which in ordinary cases would be quite inadequate enhanced the punishment under s. 280, Act X of 1872. QUEEN *v.* GOOJREE PANDAY [11 B. L. R., Ap., 3: 20 W. R., Cr., 21

221. ———— *Enhancement of sentence on appeal—Criminal Procedure Code, Act X of 1882* [illegible]

convicted [illegible]

trial befo[illegible]

months' si[illegible]

The High Court, in dismissing the appeal, directed, as a Court of Revision, that the sentence passed should be enhanced. METHER ALI *v.* QUEEN-EMPRESS . . . I. L. R., 11 Calc., 530

222. ———— *Criminal Procedure Code, 1872, s. 280—Alteration of conviction from culpable homicide to murder.*—Under s. 280 of the Code of Criminal Procedure, the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly. QUEEN *v.* ROHEEM [21 W. R., Cr., 39

223. ———— *Enhancement of sentence on persons not appealing.*—Five persons were convicted of mischief, one prisoner appealed. [illegible]

[illegible]

sentence passed on the prisoners who did not appear and who did not appeal must be annulled. ANONYMOUS . . . . . 8 Mad., Ap., 8

(*c*) MITIGATION

224. ———— Power to mitigate sentence [illegible]

[illegible]

the ground that the sentence was excessive. IN THE MATTER OF THE PETITION OF BISSUMBHUR SHAHA [B. L. R., Sup. Vol., 484: 6 W. R., Cr., 7

Overruling QUEEN *v.* RAMDHONE MUNDUL [4 W. R., Cr., 15

225. ———— *Criminal Procedure Code, 1861, s. 405.*—The High Court (like the Sessions Judge) could not, under s. 445, Criminal

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

jury 405 but too severe, and not to cases where the conviction itself was considered improper. QUEEN *v.* BISSONATH MITTER [6 W. R., Cr., 6

226. ——— Exercise of powers—*Case submitted for consideration of Government.*—If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in cases of murder, the Judge may record these circumstances and submit them for the

(*d*) REVERSAL.

227. ——— "Reverse," Meaning of—*Criminal Procedure Code (Act XXV of 1861), ss. 419, 426.*—The word "reverse" in ss 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, meant to make void, to set aside, or annul, and not merely to change or turn into the contrary. QUEEN *v.* ELAHI BAX [B. L. R., Sup. Vol., 459: 5 W. R., Cr., 80

228. ——— Power to reverse sentence—*Criminal Procedure Code (Act XXV of 1861), s. 426.*—*A* was charged with the offence of volun-

he accordingly released the prisoner. The appeal of *B*, however, was rejected, on the ground that *the evidence, though it did not prove him guilty*

S. C GOUR MOHUN GHOSE *v.* MOHINDRO NATH CHATTERJEE . . . . 13 W. R., Cr., 78

229. ——— *Reversal of conviction—Reception of evidence inadmissible—Criminal Procedure Code, 1872, s. 280.*—If in a case

SENTENCE—*concluded.*

10. POWER OF HIGH COURT AS TO SENTENCES—*concluded.*

may reverse the conviction and sentence and order a new trial (s. 280 of the Code of Criminal Procedure). REG. *v.* AMRITA GOVINDA . 10 Bom., 497

SEPARATE ACQUISITION.

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

SEPARATE CHARGES.

See CASES UNDER JOINDER OF CHARGES.

SEPARATE OFFENCES.

——— Conviction of—

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See STOLEN PROPERTY, OFFENCES RELATING TO . I. L. R., 1 All., 379

——— Trial of—

See CASES UNDER JOINDER OF CHARGES.

SEPARATE PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

See CASES UNDER HUSBAND AND WIFE.

See SUCCESSION ACT, s. 4. [13 B. L. R., 383

SEQUESTRATION.

1. ——— Writ of sequestration—*Contempt of decree or order of Court—Rule of Bombay Supreme Court, 389—"Forthwith."*—The process

which required a party who wished to enforce an order by sequestration to indorse upon the copy of the order served upon his opponent a memorandum to the effect that in default of performance of the order he would be liable to be arrested and to have his estate sequestered, was to enable the party making such endorsement to apply *ex-parte* for the writ. In the absence of such a memorandum indorsed upon the copy order, a party desirous of enforcing an order by sequestration must give proper notice to his opponent of his intention to apply for the writ. An

SEQUESTRATION—*concluded.*

order command" ... act to be done "forthwith " is

VALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND . . . . 8 Bom., O. C., 135

2. ———— *Property out of jurisdiction of High Court—Power of High Court.*—The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form, and under proper circumstances will operate *in personam* where the property sought to be sequestered is outside its jurisdiction. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND. IN RE GOPALRAV MYRAL [8 Bom., O. C., 236

SERVANT.

See CASES UNDER LIMITATION ACT, 1877, ART. 7 (1859, s. 1, CL. 2).

See CASES UNDER MASTER AND SERVANT.

See CASES UNDER PUBLIC SERVANT.

———— Custody of—

See ARMS ACT, 1878, s 19.
[I. L. R., 20 Calc., 444
I. L. R., 16 All , 276

See CONTRACT ACT, s. 178.
[I. L. R., 4 Calc., 497

———— Domestic—

See ACT XIII OF 1859.
[2 B. L. R., A. Cr., 32

See WILL—CONSTRUCTION.
[8 B. L. R , 244
9 B. L. R., Ap., 4

———— Liability of—

See BOMBAY ABKARI ACT, 1876, s. 45.
[I. L. R., 15 Bom., 45

SERVICE OF PROCESS.

See CASES UNDER PROCESS.

SERVICE OF SUMMONS.

See CASES UNDER SUMMONS.

SERVICE TENURE.

See BENGAL CESS ACT, 1871, s. 3.
[7 C. L. R., 373

See BOMBAY REVENUE JURISDICTION ACT, s. 4 I. L. R., 18 Bom., 319

See CASES UNDER GHATWALI TENURE.

SERVICE TENURE—*continued.*

See GRANT—CONSTRUCTION OF GRANTS.
[4 Bom., A. C., 1
I. L. R., 9 Bom , 531
I. L. R., 15 Bom., 222
L. R., 18 I. A., 22
I. L. R., 10 Mad., 1

See HEREDITARY OFFICES ACT.
[I. L. R., 19 Bom., 250
I. L. R., 20 Bom., 423

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130) . I. L. R., 1 Bom., 586

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECTS OF ACQUISITION.
[I. L. R., 4 Calc., 67

1. ———— Creation of service tenure—

dari chakeran, is on the zamindar. MOOKTAKESHEE DEBIA CHOWDHRAIN *v.* COLLECTOR OF MOORSHEDABAD . . . . . . 4 W. R , 30

2 — ———— Performance of services—*Nature of grant.*—A grant to a man and his heirs on condition of performing service does not in general mean that the service is to be personally performed by the grantee or his heirs, but that the grantee is to be responsible for its performance. SHIB LALL SINGH *v.* MOORAD KHAN . . 9 W. R., 126

3. ———— Deshmukh, Services of—*Hereditary offices—Bom. Act XI of 1842, s. 2.*—By s. 2 of Act XI of 1843 hereditary officers are bound to "render the usual services of their respective offices, as far as the same may be required by the Collector or other officer under whose control they may be placed by usage or the orders of Government." *Semble*—That the "usual services" of a deshmukh consist in making himself thoroughly acquainted with all circumstances affecting the land revenue in his district, and in communicating such information to the Mamlatdar or mohalkari; and that the deshmukh is bound to perform or get performed so much writing business as is necessary for the above purposes, and no more. But if by reason of the sub-division of the talukhs his duties in that respect are increased, he is bound either personally to perform such increased duties or to provide a karkun or karkuns to perform them for him. RANGOBA NAIK *v.* COLLECTOR OF RATNAGIRI
[8 Bom., A. C., 107

4 ———— Right of female to inherit service tenure.—The law in the Bombay Presidency recognizes the right of females to hold majumdari vatans, males being appointed by them to perform the service. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . 5 Bom., A. C., 202

5. ———— *Hereditary Offices Act (Bom. Act XI of 1843)—Right of females to inherit.*—Since the passing of Act XI of 1843 a

SERVICE TENURE—*continued.*

female can inherit a majumdari vatan. The Collector can assign the whole proceeds of a vatan to the officiating person who is entitled to retain such proceeds as his remuneration. BAI SURAJ v. GOVERNMENT OF BOMBAY. BAPUBHAI KHUSHALDAS v. BAI SURAJ . . . 8 Bom., A. C., 83

7. ——— Power of a vatandar to create a perpetual mutalik—*Exclusion of successors from entire management of vatan—Kararpatra grant, Construction of—Vatan—Sanad, Construction of.*—The creation of a perpetual mutalik, with

cessors from the entire management of the vatan. In 1825 the ancestor of the plaintiff, who was a desai and the last proprietor of the deshgati vatan of Tegur, granted to the ancestor of the defendants a

referred to the kararpatra already executed, and vested the entire management of the vatan in the defendants' ancestor from generation to generation

protracted

s' ancestor

the vatan

defendants'

ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the vatan under attachment. From 1850 to 1864 he remained out of possession in consequence of the attachment. In 1864 Government removed the attachment and restored the vatan to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the vatan, the plaintiff's father wrote a reply on the 15th July 1865 that he had

SERVICE TENURE—*continued.*

to recover the vatan, with mesne profits. The defendants set up the kararpatra and the sanad by which they contended they had acquired the hereditary right to keep the whole vatan in their possession and *management and to take one-third of the income* derived from the same. The plaintiff impeached these documents as forgeries, and contended that in any case they were not binding on him, as it was not competent to his ancestor to make a permanent alienation of the vatan or its management beyond his lifetime. The Court of first instance awarded the

remuneration, but it proceeded on the special service to be rendered to the family of the grantor by the

services should be no longer required. *Held* also that the sanad purported to exclude the grantor's successors in the vatan entirely from the management

entitled to the joint management of the vatan as tenants-in common in respect of their undivided shares. BHIMAJI BALVANT v. GIRIAPA TIMAPA DESAI . . . . I. L. R., 14 Bom., 82

8. ——— Appointment of deputy—*Power of holder of tenure.*—The holder of an here-

9. ——— Death of grantee without heirs—*Custom—Reversion of jaghir to grantor.*

SINGH v. HURO LAL SINGH . . 6 W. R., 87

10. ——— Abandonment of tenure—*Mokuraridar abandoning tenure—Forfeiture of property for rebellion.*—A mokuraridar, having fled.

SERVICE TENURE—*continued.*

and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mokurari was not an absolute tenure, but one on condition of service to be rendered to the former proprietor whose estate has been confiscated for rebellion. NEPAL SINGH *v.* RAM SURUN SINGH [W. R., 1864, 5

11. ——— Alienation by holder—*Crotriyam—Power of holder to alienate.*—Each holder of a crotriyam conferred for lives can only alienate his own life-interest SUNDARAMURTI MUDALI *v.* VALLINAYAKKI AMMAL . 1 Mad., 465

See VISSAPPA *v.* RAMAJOGI 2 Mad., 341

12. ——— *Interest of one of co-parceners in service tenure—Nature of interest—Act XI of 1843.*—*Held* that the interest enjoyed by

... of the co- a fit remu- the mainte-

nance of the person appointed to conduct the duties of the office. BHIMAPPA *v.* MARIAPPA [3 Bom., A. C., 128

13. ——— *Adverse posses-*

adverse possession for twelve years during the lifetime of one holder of service vatan lands is a bar

... ition the be- will

reason arising from that connection for the preservation of the estate necessarily fails, and the lands become subject to the ordinary law of descent and disposal *Per* WEST, *J.*—(1) Lands with respect to which a summary settlement under Bombay Acts II and VII of 1863 has been effected are wholly exempt from official obligation. (2) Where service lands, or what were deemed service lands have been aliened, and at a later period the service has been disclaimed or abolished, this subsequent abolition or discharge

SERVICE TENURE—*continued.*

renders the title of the alienee in possession undis-

alienated. RADHABAI *v.* ANANTRAV BHAGVANT DESHPANDE . . . I. L. R., 9 Bom., 198

See VASANJI HARIBHAI *v.* LALLU AKHU [I. L. R., 9 Bom., 285

14. ——— *Liability to sale in execution of decree—Police jaghir—Public ser-*

NILMONEE SINGH DEO *v.* KASHEE MAHTOON [25 W. R., 206

15. ——— *Vatan — Mortgage of vatan property—Adverse possession — Limitation—Succession to vatan—Entry of vatan in name of trespasser—Effect of Gordon Settlement effected with trespasser—Right of redemption* —*B D* died in 1847, leaving his two widows, *K* and *R* The plaintiff *P* was born to *R* in 1848, *i.e.*, the year after *B D*'s death. *B D*'s vatan had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of *K* and refusing to recognize the infant *P*. In 1865 the Government restored the rest of the vatan, again acknowledging *K* as the holder, the agreement with her being under "the Gordon Settlement." In 1865 *K* mortgaged two villages (part of the vatan) to one *S* (father of the defendants), who was the vatani karkun, for R9,900, which had been advanced by him to *K*, while the

against her for the revenues of 1869-70 and obtained a decree, in execution of which he sold the villages and bought them at the sale In 1878, however, the Collector cancelled the sale under the Vatan Act (Bombay Act III of 1874). In 1873 *S* obtained a

16th March 1872 *K* adopted one *B* as a son to her deceased husband *B D*. In December 1872 *P* sued

terms, the two having joint possession of the mortgaged villages, *P* being subsequently to October 1878 the recognized occupant, and *S* taking some, if not

SERVICE TENURE—*continued.*

all, of the revenues of the two villages. In 1880 *S* died, and his sons, the defendants, quarrelled with *P*, who in 1881 obtained an order from the Collector directing the village officers to pay the revenues

of the two villages. In the alternative, he prayed for redemption of the mortgage. The defendants pleaded (*inter alia*) that the villages were not vatan; that

the property in question was part of a desai vatan, and as such was held on service tenure. (2) That the property in question was subject to the rule which was in force in 1865, when the mortgage to *S* was executed, *viz*, that alienation by way of mortgage of any portion of vatan property had no force beyond the life of the vatandar who mortgages it. (3) That

that Government had entered the vatan in her name, and that the "Gordon Settlement" was effected with her, would not make her vatandar as long as *B D*'s son (the plaintiff) was alive (4) That if *K* was a mere trespasser, then the plaintiff's right to recover the lands free from incumbrance, on the ground that he was the vatandar, had been lost by limitation, and the property had become *K*'s by adverse possession. The plaintiff, however, as her step-son, was her heir. The mortgage was proved and was binding on him as heir, and as such he had a right to redeem it. SWAMIRAO *v.* PADAPA BIN BHUJANGRAV

[I. L. R., 18 Bom., 22

16. ——— *Vatan service land, Alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Vatandars (Bombay) Act III of 1874—Bom. Reg. XVI of 1827—Bom. Acts II and VII of 1863.*—*R* and his sons were members of an undivided family. In execution of certain money-decrees passed against *R*, the lands in dispute were sold to various persons from whom they were afterwards bought by the defendant. In 1875 *R* died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands They alleged that the lands were service vatan lands and inalienable, and that the execution-sales affected nothing except *R*'s life-interest, and that on *R*'s death they (the plaintiffs) became entitled. They also contended that, even if the Court should find that the lands were not service vatan lands, they were at all events ancestral property, and that the plaintiffs' interests therein were not affected by execution-sales under decrees to which they were not parties. *Held*, on the evidence affirming the judgment of the Court below, that, with the exception of two fields, none of the lands in question were service

p. 215. What is termed a "Gordon Settlement"

which the Government relieved certain vatandars in perpetuity from liability to perform the services attached to their offices in consideration of a judi or quit-rent charged upon the vatan lands. These

party to those settlements to convert the vatan lands into the private property of the vatandar with the necessary incident of alienability, but to leave them attached to the hereditary offices, which, although freed from the performance of services, remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874 APPAJI BAPUJI *v.* KESHAV SHAMRAV. KESHAV SHAMRAV *v.* APPAJI BAPUJI . . . . I. L. R., 15 Bom., 13

17. ——— Cessation of services—*Land held on quit-rent—Waiver of performance—Lapse of tenure.*—As an ordinary rule, if land is given on a quit-rent, or no rent at all, in consideration of service to be performed, the tenure would lapse when those services ceased. *Quære*—When no service has been

18. ——— *Impartible*

SERVICE TENURE—*continued.*

19 ———————— *Impartible vatan —Discontinuance of services.*—Discontinuance of services attached to an impartible vatan does not alter the nature of the estate and make it partible. RAMRAO TRIMBAK *v.* YESHVANTRAO MADHAVRAO [I. L. R., 10 Bom., 327

20. ———————— *Commutation of services—Desaigiri allowance—Right to hold as*

the defendant's father as the officiating desai, the suit was rejected under Act XI of 1843 In 1866 an arrangement was come to, under which a sum of R40-2-0 was to be annually available over and above the remuneration of the officiator. On the 9th of July 1867 the defendant received this sum for the first time. In 1873 a new arrangement was effected, under which the service was abolished, the Government resuming half of the allowance and giving up the other half freed from service unconditionally to

right to hold the moiety exclusively as a personal allowance to himself. MANEKLAL AMRATLAL *v.* SHIVLAL BHOGILAL . I. L. R., 8 Bom., 426

21. ———————— *Long possession —Liability for rent.*—The mere fact of a long prior possession of a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed. CHUNDER NATH ROY *v* BHEEM SINDAR [W. R., 1864, Act X, 37

22. ———————— *Commutation of services for rent*—Where the original donee of a service tenure ceases to do any service and pays in lieu a rent which his descendants continue to pay, the condition of the tenure becomes altered from service to rent. MAHENDRA SINGH *v.* JOKHA SINGH [19 W. R., P. C, 211

23. ———— Resumption of tenure—*Par-*

throughout the area of the talukh. A butwara having been effected, the plaintiff obtained a fourth share within which fell the assigned land. Upon this the plaintiff sued the defendant to take back

a consideration for those services BEECHOOK PASBAN *v* KULAB SINGH . . . 20 W. R., 369

24. ———————— *Bom. Act VII of 1863, s 2—Jurisdiction of Civil Courts—Resumption of service tenures* —Cl. 4 of s 2 of Bombay Act VII of 1863 (an Act for the summary settlement of claims to exemption from the payment of Government land revenue) enacted that no suit or action between Government and the holders of any lands held for service in regard to the tenure of such lands should be entertained in any Court of Civil Judica-

service lands. The laying down of general rules by Government as to the resumption of service lands under art. 3, cl. 3 of s 2 of the Act, was not a condition precedent to their protection from suits and actions in respect of such lands PREMSHANKAR RAGHUNATHJI *v.* GOVERNMENT OF BOMBAY [8 Bom., A. C., 195

25 ———————— *Suit for ejectment—Bengal Tenancy Act (VIII of 1885), ss 89 and 181* —Service tenures are excepted from the operation of s. 89 of the Bengal Tenancy Act. MOKBUL HOSSAIN *v.* AMEER SHEIKH [I. L. R., 25 Calc., 131

26. ———————— *Resumption by the Government of estates held on political tenure—Mixed estate of saranjam and inam so held—Jurisdiction of the Civil Court.*—The engagements entered into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed

whom a saranjam, or jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political considerations, and it is not within the competency of any legal tribunal to review the decision. Inam villages and lands, with the mokassa, included originally in one saranjam granted under the Maratha rule for the support of troops, remained after 1820,

jam. The whole estate passed to the persons whom

SERVICE TENURE—*continued.*

the Government at its discretion for political reasons recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter. SULTAN SANI *v.* AJMODIN. SULTAN SANI *v.* BEGUMBI

[I. L. R., 17 Bom., 431
L. R., 20 I. A., 50

27. ——— *Bhoomear tenures*—Bhoomears are bound to render certain customary services, but their lands are not resumable. GOPALNATH TEWAREE *v.* BHOOTAH ORAHOO

[6 W. R., 137

28. ——— *Power of Government to resume majumdari vatans.*—Government

DAMODHAR PARMANANDAS . 5 Bom., A. C., 202

29. ——— *Services dispensed with—Right of zamindar to resume.*—A zamindar has *primâ facie* a right to resume lands of the zamindari granted subject to a quit-rent to tenants upon condition of their rendering personal services when such services are dispensed with. SANNIYASI RAZU *v.* ZAMINDAR OF SALUR. PAKIR RAZU *v.* ZAMINDAR OF SALUR . I. L. R., 7 Mad., 268

30. ——— *Suit for enhancement of rent—Right to resume when services not required—Evidence.*—*R* sued *S* to recover instal-

an enhanced rate and to execute a counterpart. *S* denied that he held on service tenure, and set up a gift from one of the ancestors of *R*. *Held* that, as *S* failed to prove the alleged gift and had not traversed *R*'s allegation that he was entitled to resume the

enhanced rate claimed. SITARAMARAZU *v.* JAGANADA NARAYANA . . I. L. R., 3 Mad., 367

31. ——— *Landlord and tenant—Service tenure with rent—Enhancement of rent—Resumption—Onus probandi.*—In a suit brought in 1886 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money rent

intimated to the defendant that the service was dispensed with, and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time. *Held* that the plaintiff was not precluded by any implied contract from increasing the rent; and that the burden of proving the plea that the plaintiff was not entitled to eject lay on the defendants, and had not been discharged. MAHADEVI *v.* VIKRAMA

[I. L. R., 14 Mad., 365

32. ——— *Grant of service tenure rent-free—Assessment of rent by settlement*

been granted for service, and that service was no longer required.—*Held* that this was not a sufficient defence to an action by the holder of the land, it not being shown that by the terms of the grant (assum-

33. ——— *Lands held on amaram tenure resumable at will on reasonable notice—What amounts to reasonable notice considered.*

on them to that effect. The first of such notices had been served less than three months before the end of a fasli, in the second, suit was threatened in default of reply within ten days. *Held* that lands held on amaram tenure are resumable, and that the defendants had no permanent right of tenure. *Held* further that, before such resumption of lands can take place, reasonable notice must be given, and that the notices which had been served were insufficient. NARASAYYA *v.* VENKATAGIRI RAJAH I. L. R., 23 Mad., 262

See UNIDE RAJAHA RAJE BOOMARANGE BAHADUR *v.* PAMBUASAMY VENKATADRY NAIDOO

[7 Moore's I. A., 128

34. ——— *Jagir granted to gorait or village watchman—Resumption by zamindar—Liability to ejectment—Notice to quit.*—A service tenure created for the performances of

pointed out. *Sannayasi v. Salur Zamindar,*

SERVICE TENURE—*continued.*

granted by the zamindar to a gorait (village watchman), the lower Courts found that the grant was made in favour of the defendant's ancestor more than twelve years before suit and descended from father to son, who was allowed to retain possession without rendering services to the zamindar, and that the zamindar could not prove the terms of the grant. *Held* that the facts found did not legitimately lead to the inference drawn therefrom that the tenure was of a permanent character, but that the defendants could not be ejected without notice RADHA PERSHAD SINGH *v.* BUDHU DASHAD . I. L. R., 22 Calc., 938

35. ———— *Resumption of service grant.*—The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages had been granted on service tenure, and that he was entitled to resume them *Held*, on the evidence that the plaintiff was not entitled to resume the villages. VIZIANAGRAM MAHARAJAH *v.* SITARAMARAZU . . I L R., 19 Mad, 100

36. ———— *Resumption of land granted with condition of service—Land granted as remuneration for service—Service attached to grant of hereditary office—Adverse possession—Limitation* —Land granted with a condition of service attached to the grant cannot be resumed when the service is no longer required. But land granted as remuneration for service may be resumed when the service is no longer required, except when there has been a grant of an hereditary office to those who are to perform the service. In that case, the land can only be resumed when the need of such service altogether ceases. Where the

that the appointment of the defendants' family as hereditary kulkarni was valid. (2) That the claim to recover possession of part of the lands assigned for the remuneration of the defendants as karkun was time-barred by the defendants' adverse possession since 1863-64 (3) That the defendants' possession of the lands assigned for the remuneration of the defendants as kulkarni was not adverse to the plaintiff previously to 1887, but that, as the hereditary kulkarnis of the village, the defendants were entitled to enjoy the land so long as the services of a kulkarni were required, whether their services were accepted or were refused, provided they duly discharged the duties of the office should their services be required. BHIMAPAIYA *v.* RAMCHANDRA BHIMRAO

[I. L. R., 22 Bom., 422

SERVICE TENURE—*continued.*

37. ———— *Non-performance of service, Effect of—Adverse possession—Limitation, Liability to.*—Where lands are held as

38. ———— *Non-performance*

payment of the full assessment from defendant.

39. ———— *Chakeran lands—*

talukhdar as, by usage in the zamindari chowkidars were accustomed to render to the zamindar. JOYKISHEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN . 1 W. R., P. C., 26; 10 Moore's I. A., 16

40. ———— *Resumption of jagir—Proof of personal services—Grant of sanad to jagirdar* —Where a sanad granted to the holder of a jagir was only a confirmation by the Government and the Rajah of the tenure under which the jagir was held, and authorized the jagirdar to remain in possession and in the performance of the services with his brothers, without describing the kind of service,—*Held* by the Privy Council that the Rajah could not resume the land without proof that the

SERVICE TENURE—*concluded.*

services to be performed by the jagirdar were personal services only to the Rajah. NILMONEY SINGH DEO *v.* GOVERNMENT . . . 18 W. R., 321

S. C. in High Court . . . 6 W. R., 121

41. ——— Forfeiture of tenure—*Alien-*

42. ——— *Refusal to perform services—Ejectment*—A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. HURROGOBIND RAHA *v.* RAMRUTNO DEY . I. L. R., 4 Calc., 67

43. ——— *Tenure resumable*

LAKSHMI *v.* CHENDRI . I. L. R., 8 Mad., 72

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See DOMICILE . I. L. R., 4 Calc., 106

SESSIONS CASE.

See CRIMINAL PROCEDURE CODES, ss. 436, 438 . . I. L. R., 1 All., 413
[I. L. R., 4 Calc., 16
7 C. L. R., 168
I. L. R., 2 All., 570
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[11 Bom., 98
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SESSIONS JUDGE.

——— Case heard by—

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[I. L. R., 6 Calc., 96
I. L. R., 20 Mad., 445
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I. L. R., 17 All., 36

See REFERENCE TO HIGH COURT—CRIMINAL CASES . 7 N. W., 211
[20 W. R., Cr., 50
I. L. R., 2 All., 771
14 W. R., Cr., 25
6 C. L. R., 245
I. L. R., 6 Calc., 875
I. L. R., 9 All., 362
I. L. R., 10 All., 146
I. L. R., 23 Bom., 696
I. L. R., 27 Calc., 205
4 C. W. N., 683
I. L. R., 23 Calc., 249, 250

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See CASES UNDER VERDICT OF JURY—GENERAL CASES.

See CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

——— Commitment to—

See CASES UNDER COMMITMENT.

See CRIMINAL PROCEEDINGS.
[I. L. R., 3 All., 258
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I. L. R., 8 Bom., 312
I. L. R., 16 Bom., 200
I. L. R., 17 Mad., 402

See CASES UNDER MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

——— Duty of—

See PLEADER—APPOINTMENT AND APPEARANCE . . I. L. R., 23 Calc., 493

See REFERENCE TO HIGH COURT—CRIMINAL CASES 10 W. R., Cr., 50
[I. L. R., 13 Mad., 343
I. L. R., 25 Calc., 555
4 C. W. N., 683

See VERDICT OF JURY—GENERAL CASES.
[I. L. R., 19 Bom., 735

——— Obligation to form independent

bound to form his own opinion, aided by the assessors

SESSIONS JUDGE, JURISDICTION OF—

See BAIL . . I. L. R., 1 All., 151
[1 B. L. R., A. Cr., 7
24 W. R., Cr., 7, 8

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 25 W. R., Cr., 8
[7 C. L. R., 143
I. L. R., 8 All., 665
I. L. R., 12 All., 551

See COMMITMENT . 2 W. R., Cr., 44
[I. L. R., 13 Calc., 121
I. L. R., 10 Bom., 319
I. L. R., 8 All., 14
I. L. R., 15 All., 205
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See CASES UNDER CRIMINAL PROCEDURE CODES, ss. 436, 438.

SESSIONS JUDGE, JURISDICTION OF —*continued.*

See Criminal Procedure Codes, s. 437.
[I. L. R., 12 Calc., 522
I. L. R., 9 All., 52
I. L. R., 13 All., 434
I. L. R., 14 Mad., 334
I. L. R., 22 Calc., 573
I. L. R., 27 Calc., 658

See Criminal Procedure Codes, s. 487.
[I. L. R., 14 All., 354

See Criminal Proceedings.
[I. L. R., 17 All., 36

See Cases under Discharge of Accused.

See Offence relating to Documents.
[I. L. R., 12 Mad., 54

See Reformatory Schools Act, 1897.
[4 C. W. N., 225

See Registration Act, 1877, s. 83 (1866, s. 95) . 6 B. L. R., 692, 693 note

See Sanction for Prosecution—Power to grant Sanction
[8 Bom., Cr., 126
I. L. R., 2 Bom., 384
I. L. R., 2 All., 205
I. L. R., 10 All., 582

See Security for Good Behaviour.
[24 W. R., Cr., 10
I. L. R., 20 Calc., 155

1. ——— Offence under Bom. Reg.

under the provisions of the schedule of the Code of Criminal Procedure Amendment Act (VIII of 1869) Reg. v. Ajam Dulla . . 8 Bom., Cr., 115

2. ——— Offence under Opium Regulation—*Bom. Reg XXI of 1827, s 7—Criminal Procedure Code, 1861, ss. 21 and 409.*—Although

appellate jurisdiction vested in the Court of Session by s. 409 of the Code. Reg. v. Sadu Dadabhai [9 Bom., 166

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personation of a witness before a Registrar of Assurances under s 95 of the Registration Act (XX of 1866). Queen v. Sheogolam Das
[6 B. L. R., F. B., 692: 15 W. R., Cr., 58

in

or

s.

Hurronath Chowdhry v. Rajender Chunder Roy . . . . . . 15 W. R., Cr., 1

6 ——— *Criminal Procedure Code, 1861, s. 319—Appeal from Magistrate.—Held*
to hear
under s
Code,
was to prevent breaches of the peace likely to be occasioned and not the adjudication of title. In the matter of the petition of Dutt Ram Misr
[1 Agra, Cr., 29

7. ——— Appeals from sentences of Justice of the Peace acting under Act I of 1859 —The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (I of 1859) In the matter of the petition of Evans
[2 Mad., 473

8. ——— Offence under Penal Code, s. 409, and under s 29, Act V of 1861—*Power of Sessions Judge after acquittal on former charge.*—Where an accused was charged before the Sessions Judge under both s. 409, Penal Code, and under the special law, s 29, Act V of 1861, and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone had jurisdiction to convict under that law. Queen v. Bhoobun Singh Bhoobun Singh v Queen
[9 W. R., Cr., 36

9. ——— Power of Sessions Judge to

the High Court and the Court of Session to try

for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of *J* and the third with abetment of the offence. At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C*, and convicted them upon both the original charges and the added charge. The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J*. *Held* that the Sessions Judge had power, under s 28 of the Code to try the charge

SESSIONS JUDGE, JURISDICTION OF —*continued.*

assuming that he had power to add it. QUEEN-EMPRESS *v.* KHARGA . I. L. R., 8 All, 665

10. ———— *Criminal Procedure Code, 1872, s. 231—Conviction on fresh charge in support of which there was no evidence before*

and, having tendered a pardon to and examined *C* as a witness, convicted and sentenced *R* to two years' rigorous imprisonment. *Held* that, as there was no evidence before the Magistrate to support the charge against *R* framed by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal. *Held* also that, inasmuch as the Sessions Judge considered *R* more culpable than *C*, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an enquiry as to whether there was ground for a more serious charge against *R*. *Semble*—The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in ss. 455, 472, 474 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary

11 ———— Trial without committal by Magistrate—*Witness sent up with conditional pardon—Criminal Procedure Code, 1861, ss. 359, 439.*—*Held* that a Sessions Judge acted

[19 W. R., Cr., 43

12 ———— Order for re trial on appeal —*Criminal Procedure Code, 1872, s. 280, amended by s 28, Act XI of 1874*—It is competent to a Court of Session under s. 280 of the Criminal Procedure Code as amended by s 28, Act XI of 1874, to order a re-trial of a case which is before it on appeal. IN THE MATTER OF SHER MAHOMED 2 C. L. R., 511

SESSIONS JUDGE, JURISDICTION OF —*continued.*

13. ———— Power to give judgment on evidence partly recorded by predecessor—*Criminal Procedure Code, 1872, s 328.*—The power given by the Criminal Procedure Code to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge. TARADA BALADU *v.* QUEEN . I. L. R., 3 Mad., 112

QUEEN *v.* RUGOONATH DASS [23 W. R., Cr., 59

14. ———— Power in regular appeal—*Insufficient evidence—Acquittal*—If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. IN THE MATTER OF THE PETITION OF KHERAJ MULLAH. KHERAJ MULLAH *v.* JANAB MULLAH [11 B L. R., 33: 20 W. R., Cr., 13

15 ———— Power to suspend sentence —A Sessions Judge has no authority to suspend his own sentence. ANONYMOUS . 4 Mad, Ap., 2

16 ———— A Sessions Judge has no power to suspend a sentence in any case unless there is an appeal. ANONYMOUS [5 Mad, Ap., 1

He should state distinctly whether he agrees with the verdict of the jury or not. QUEEN *v.* CHAND BAGDEE . . . 7 W. R, Cr., 6

17. ———— Power to prevent prisoner from appealing—*Right to appeal.*—It is not the the province of the Sessions Judge to decide whether a prisoner has a right of appeal or not; he is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalatnama to appeal. QUEEN *v.* VAIYAPURI GAUNDAN . . 1 Mad., 4

18. ———— Mitigation of sentence without appeal.—*Held* that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him. REG *v.* MULJI NANA . . . . 5 Bom, Cr., 24

19. ———— Power to sentence on appeal from decision of Magistrate—*Commutation of sentence*—A Sessions Judge cannot, on

20. ———— Alteration of sentence in

DANSANG DADA . . I. L R., 18 Bom, 751

QUEEN-EMPRESS *v.* LACHMI KANT [I. L R., 18 All, 301

SESSIONS JUDGE, JURISDICTION OF
—continued.

21. ———— **Power to pass sentence of death**—*Affray with murder—Offence before Penal Code came into operation.*—In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, it was held that a Sessions Judge had himself power, under s 4, Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court. QUEEN v. BUSTI SINGH . . . 14 W. R., Cr., 76

22. ———— **Amendment of sentence**—*Alteration of conviction—Criminal Procedure Code, 1861, s. 22*—*Held* that an order of a Sessions Judge, by which he altered a conviction by the Assistant Sessions Judge of "dacoity" to one of "robbery," was illegal, not being an amendment of a sentence or order within the meaning of s. 22 of the Criminal Procedure Code. *Held* further that, if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence and to have left them to be charged with and tried for "robbery." REG. v. THOMESIT . . . . 5 Bom., Cr, 22

23. ———— **Concurrent jurisdiction with Magistrate**—*Criminal Procedure Code, 1861, s 434—Report to High Court.*—A full-power Magistrate was not immediately subordinate to the [illegible]

[7 Bom., Cr., 73

24. ———— **Power to call for and refer to the High Court proceedings of Magistrate**—*Criminal Procedure Code, 1869, s 23*— [illegible]

ceedings in a case before a full-power Magistrate. REG. v. KESHAVSHET . . 6 Bom., Cr., 74

25. ———— **Power to refer to High Court**—*Unnecessary reference to High Court.*— [illegible]

QUEEN v. NUSSUROODDEEN SHAZWAL [11 W. R., Cr., 24

26. ———— **Power to call for report** from Magistrate [illegible]

Judge to call for the record and proceedings, *e g.*, in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate. In trials by the Magistrate of the district, or full-power Magistrate, in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. REG. v. GIRDHAR DHARAMDAS [6 Bom., Cr., 33

27. ———— **Power to call for and examine record**—*Absence of order by Magistrate.*—There was no provision in the Criminal Procedure Code, 1861, which made it lawful for a Court of Session to call for and examine the record of a case tried by a Subordinate Magistrate where no sentence or order had been passed thereon by the immediately subordinate Court of the Magistrate. REG. v. BHASKAR KHARKAR . . . 3 Bom., Cr., 1

28. ———— **Trial in case committed by Magistrate**—*Objection that case was tried without complaint*—A Court of Session cannot treat as a nullity the commitment of a full-power Magistrate, [illegible]

29. ———— *Objection to irregularity of proceedings*—The fact of a commitment being made by a Joint Magistrate, who is an officer exercising the powers of a Magistrate, was sufficient, under s. 359, Code of Criminal Proce- [illegible]

30. ———— **Power to quash sentence of Assistant Sessions Judge**—*Sentence submitted for* [illegible]

[illegible] Bom., Cr., 3

31. ———— **Power to quash commitment for illegality**—*Duty to report proceedings to High Court*—The Criminal Procedure Code, 1861, did not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions [illegible]

32. ———— **Power to annul conviction and sentence**—*Offence beyond jurisdiction of subordinate Court*—It is only when a Court subordinate to a Court of Session convicts a person of an offence not triable by such Court that the Court of Session can annul the conviction and sentence If the prisoner is guilty of an offence beyond the jurisdiction of the subordinate Court, the Court of Session

SESSIONS JUDGE, JURISDICTION OF —*continued.*

should refer the case to the High Court. QUEEN v. ICHABUR DOBEY . . 4 W. R., Cr, 11

Bom., Cr., 10

REG v. GOPAL LAKSHUMAN . 5 Bom., Cr., 25

34. ——— **Power to quash illegal conviction**—*Giving false evidence in judicial proceeding.*—The offence of giving false evidence

35. ——— **Power to annul conviction and order commitment**—*Offences triable by Magistrate—Criminal Procedure Code (Act VIII of 1869), s. 435*—The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. S. 435, Act VIII of 1869, related to offences triable by the Sessions Judge. IN THE CASE OF WAZIR SINGH

[3 B. L. R., A. Cr., 65: 12 W. R., Cr., 46

QUEEN v. JEETUN KHAN . 11 W. R., Cr, 45

36. ——— *Illegal conviction by Magistrate—Criminal Procedure Code, 1861, s. 435*—Where the Sessions Judge was of opinion that a Subordinate Magistrate had convicted the defendant of an offence which the Subordinate

37. ——— **Order to cancel proceed-**

38. ——— **Power to direct Magistrate to commit to Sessions**—*Conviction by Magistrate without jurisdiction.*—Where a Magistrate has convicted and sentenced a prisoner of an

39. ——— **Power to reverse order of**

SESSIONS JUDGE, JURISDICTION OF —*continued.*

Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. *Held* that the order of the Sessions Judge was made without jurisdiction. QUEEN v. SHIB CHUNDER RAI . . . . 9 W. R., Cr., 57

40 ——— **Conviction on confession before Magistrate after plea of not guilty.**—A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate QUEEN v. HURSOOKH 2 N. W., 479

41. ——— **Power to interfere with order of acquittal**—*Acquittal by Magistrate—Criminal Procedure Code, 1861, s. 435.*—After an

42. ——— **Power to order commitment**—*Cases exclusively triable by Court of Session.*—The Court of Session can only order the commitment of an accused person in cases exclusively triable by it QUEEN v. SEETUL PERSHAD

[5 N. W., 168

43. ——— *Power to commit to itself cases not triable exclusively by Court of Session*—*Criminal Procedure Code (Act X of*

Criminal Procedure cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself. IN THE MATTER OF EMPRESS v. FUTTEH JYA KHAN

[I. L. R., 4 Calc., 570

S. C. IN RE FATA IYAH KHAN . 3 C. L. R., 599

44. ——— *Criminal Procedure Code, 1861, s. 435.*—Where a Judge, under s. 435 of the Criminal Procedure Code, had directed

QUEEN v. GHASEE

45. ——— *False evidence.*—

46. ——— *Criminal Procedure Code, 1872, s. 472.*—L made a complaint

SESSIONS JUDGE, JURISDICTION OF *—continued.*

punishable under s. 466 of that Code with seven [illegible]

under s. 193 of the Penal Code is not exclusively triable by a Court of Session *Held* also *per* SPANKIE, J., that the Court of Session was competent, not- [illegible]

[illegible] MAN SINGH . . I. L. R., [illegible] All., 560

47 ———— *Criminal Pro-* [illegible]

[illegible] MAHATCON . . [illegible] W. R., 1864, Cr., 3

48. ———— *Person discharged by Magistrate* —A Sessions Judge has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot be interfered with by the High Court. QUEEN *v.* SHEETARAM CHOWDHRY . 2 W. R., Cr., 44

49 ———— *Discharge of accused on inquiry before Magistrate—Further inquiry* —When an inquiry has been made and the accused discharged, the Sessions Court may order the commitment of the accused, but cannot merely direct further inquiry. QUEEN *v.* GHASSITRAM [3 N. W., 90

50. ———— *"Acquittal and release" of accused by Magistrate—Criminal Procedure Code, 1861 s 435.*—Where a Magistrate used the words "acquittal and release," when he intended only to discharge a person accused of an offence not triable by him,—*Held* that the Court of Session was competent, under s 435, Code of Criminal Procedure, to order a commitment of such accused person QUEEN *v* NEETIE DULAL [8 W. R., Cr., 41

51 ———— *Discharge by Magistrate—Criminal Procedure Code, 1861, s 435.* —A Sessions Judge might, under s. 435 of the Code of Criminal Procedure, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions IN THE MATTER OF THE PETITION OF MUSMUT ALI CHOWDHRY *alias* MOOCHEE MEAN . 7 W. R., Cr., 38

SESSIONS JUDGE, JURISDICTION OF *—continued.*

52. ———— *Conviction under Penal Code, ss 323, 352* —A Sessions Judge has no authority to interfere and direct a committal in the case of a conviction for assault under s 352 or of hurt under s 323 of the Penal Code, both of them being offences triable by the subordinate Court. QUEEN *v.* RAMSOHUL SINGH . 5 W. R., Cr., 12

53. ———— **Power of Joint Sessions Judge**—*Criminal Procedure Code (Act X of 1872, s. 17, and Act X of 1882, ss. 9 and 195, and Ch XXXII)—Discharge by a Magistrate—Power of Joint Sessions Judge to direct committal.*—A [illegible]

dispose of the application as he might think fit. IN THE MATTER OF THE PETITION OF MUSA ASMAL [I. L. R., 9 Bom., 164

54. ———— *Applications under Criminal Procedure Code, 1882, Ch. XXXII —Sessions Judge, Power of, to direct disposal by* [illegible]

Sessions Judge to dispose of them, a Joint Sessions Judge being strictly precluded from exercising any of the powers under Ch XXXII of the Criminal Procedure Code, and s. 193, cl. 2, contemplating only cases for trial REFERENCE BY THE SESSIONS JUDGE OF SURAT . I. L. R., 9 Bom., 352

55. ———— *Criminal Procedure Code, s 289—"No evidence"—Acquittal of accused without taking opinions of assessors* —The words "there is no evidence" in s. 289 of the Code of Criminal Procedure, 1882, cannot be extended to,

[illegible]

which may or perhaps must have caused a failure of justice within the meaning of s 537 of the Code of Criminal Procedure. *In the matter of the petition*

SESSIONS JUDGE, JURISDICTION OF —*continued.*

of Narain Dass, I. L. R, 1 All., 610, referred to. QUEEN-EMPRESS *v.* MANNA LALL
[I. L. R., 10 All, 414

56. ——— *Sanction to prosecute by District Judge—Trial by same Judge as Sessions Judge—Criminal Procedure Code (Act X of 1882), ss 195, 487—Penal Code, s 196.*—A Sessions Judge is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s. 196 of the Penal Code, when he has as District Judge given sanction for [illegible]

6 Bom, 479, referred to. QUEEN-EMPRESS *v.* SARAT CHANDRA RAKHIT . I. L. R., 16 Calc., 766

57. ——— *Criminal Procedure Code, ss. 193, 287, 288—Cancellation of conditional pardon to prisoner—Approver, Trial of—Proof of confessional statements of accused* — Several persons were charged with dacoity. While the case was pending, two of the accused made confessional statements; afterwards a conditional [illegible]

approvers, whereupon the Sessions Judge placed them in the dock, called on them to plead, and permitted the depositions made by them before the Magistrate, but not their confessional statements, to be read to the jury. *Held* that the trial of [illegible]

the case under s. 288 of the Code, and to have allowed the other accused to cross-examine them. *Per curiam* —The Sessions Judge committed an irregularity in refusing to place on the record the confessional statements of persons whom he treated as accused. QUEEN-EMPRESS *v.* RAMA TEVAN
[I. L. R., 15 Mad., 352

58. ——— *Conditional par-* [illegible]

charged with the murder of *U*'s husband, and in the course of the police inquiry made certain statements to the police. They were then sent up by the police to a Deputy Magistrate for inquiry. *J* made three statements on the 28th of February, the 1st of March and the 9th of March 1894, respectively, two of which were confessions, the third being a [illegible] two [illegible] first [illegible] with- [illegible] was tendered a pardon, and was thereafter treated as an approver, in which capacity she gave evidence against *J*. *J* was then committed to the Court of Sessions to take his trial, *U* being sent up as an approver. In the Sessions Court *U* resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, *J* of murder and *U* of abetment of murder *Held* that the conviction of *U* was bad the Court of Sessions having had no jurisdiction to try her, as she was never committed to that Court by any competent Magistrate. QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI
[I. L. R., 22 Calc., 50

59. ——— *Powers of Sessions Judge on revision—Further enquiry—Power of Sessions Judge to direct—Criminal Procedure Code (Act X of 1882), ss. 423, 435, 436, 439* — A complaint was made before a Magistrate, which involved a charge of dacoity against the accused person and others The Magistrate, in dealing with the case, proceeded under s 209 of the Code of [illegible]

Code, *viz*, theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s 258 of the Code, and gave him sanction under s. 195 to prosecute the complainant under s. 211 of the Penal Code. The complainant then applied to the Sessions Judge to [illegible]

s. 435, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Session, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had in fact [illegible]

60. ——— *Sessions Judge's power to review his order in proceedings taken* [illegible]

SESSIONS JUDGE, JURISDICTION OF
—continued.

review his order and set aside the sanction. An application to a Sessions Judge for revocation of sanction granted under s. 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be reviewed or revived by him. *Queen-Empress* v. *Fox, I. L. R., 10 Bom., 176,* and *Mehdi Hasan* v. *Tota Ram, I. L. R., 15 All., 61,* referred to QUEEN-EMPRESS v. GANESH RAMKRISHNA . I. L. R., 23 Bom., 50

61. ———— *Appeal from a conviction by a Magistrate, other than a Presidency Magistrate, where accused pleads guilty—Power of Sessions Court.*—The accused pleaded [illegible]

62. ———— *Criminal Procedure Code (Act V of 1898), ss. 195, 476—Order by Deputy Magistrate sanctioning prosecution—Complaint by Deputy Magistrate—Jurisdiction of* [illegible]

perjury on one occasion or another, ordered them [illegible]

intended to pass an order under s 476 or to make a complaint under s. 195 (1) (b) of the Code of Criminal Procedure, the Sessions Judge had no power to interfere. QUEEN-EMPRESS v. AUKAUNA [I. L. R., 23 Mad., 205

63 ———— *Criminal Procedure Code (Act V of 1898), s. 436—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal*—Charges under ss 304 and 147 of the Penal Code were brought by the police against certain accused in the Court of a Deputy Magistrate, who took all the evidence for the prosecution, but went on furlough [illegible] otherwise. [illegible] insufficien[illegible] to charg[illegible]

SESSIONS JUDGE, JURISDICTION OF
—concluded.

Code, and after hearing evidence for the defence acquitted the accused. The Sessions Judge, considering the alteration in the charges improper at such a stage, ordered a fresh inquiry into the offence. *Held* that the Sessions Judge had exercised jurisdiction not conferred upon him by law, and that his order for a fresh inquiry must be set aside. *Baijnath Pandey* v. *Gauri Kanta Mandal, I. L. R, 20 Calc., 633,* approved of. QUEEN-EMPRESS v. HANUMANTHA REDDI . . I. L. R, 23 Mad., 225

SET-OFF.

See COMPENSATION—CIVIL CASES. [I. L. R., 18 Bom, 717

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS [5 B. L. R., Ap., 1

See ROAD CESS ACT. [I. L. R., 4 Calc., 576 11 C. L. R., 140

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF. [I. L. R., 20 Calc., 527 I. L. R., 21 Calc., 419

1. GENERAL CASES.

1. ———— **Raising issue of set-off on trial**—*Procedure*—When a defendant raises a claim of set-off on the trial of that issue, he must be considered as plaintiff. JAGADAMBA DASI v. GHOB [5 B. L. R., 639

As to how cases of set-off will be dealt with, *see* RAMGOPAL v. MAJETI MALLIKKARJANUD [1 Mad., 396

2 ———— **Power of Revenue Court to allow set-off under Act X of 1859, s. 24**— [illegible]

principal directly or used for the benefit of his principal with his sanction and authority. MOHIMA RUNJUN ROY CHOWDHRY v NOBO COOMAR MISSER [18 W. R., 339

3. ———— **Written statement of set-off**—*Act VIII of 1859, s. 121*—Under s 121, Act VIII of 1859, a defendant, desirous of setting off against the claim of the plaintiff the amount of any payment made by him on plaintiff's account, was bound to tender a written statement containing the particulars of his demand. POORNA CHUNDER ROY v. BEHAREE LALL MOOKERJEE . 14 W. R., 473

4. ———— **Character in which claim is made**—*Civil Procedure Code, s. 111—Written*

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

statement pleading a set-off.—In a suit in which the plaintiff sued, as son of a deceased vakil, to recover the amount of a promissory note and bond executed by the defendant to his deceased father, the defendant alleged in his written statement that the plaintiff's father had collected funds belonging to him, as his vakil, exceeding the amount due on the promissory note and bond and asked for a decree for the difference. *Held* (1) that the written statement must be regarded as a plaint in regard to the set-off, and should have been stamped accordingly; (2) that if the plaintiff claimed as the heir and representative of his father, the set off was rightly pleaded. CHENNAPPA *v.* RAGHUNATHA . I. L. R., 15 Mad., 29

5. ——— **Right of set-off**—*Cross-demands arising out of same transaction.*—*Semble* —The right of set off will be found to exist not only in cases of mutual debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant be driven to a cross-suit. CLARK *v.* RUTHNAVALOO CHETTI 2 Mad., 296

6. ——— ——— *Cross-demands arising out of same transaction—Suit to enforce contract—Damages.*—The right of set-off exists where there are cross demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. In a suit to recover money due under a contract made between the plaintiff and defendants,—*Held* that the defen- [illegible]

7. ——— *Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s. 111.*—When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s. 111 of the Civil Procedure Code. *Bhagbat Panda* v. *Bamdeb Panda, I. L. R., 11 Calc., 557*, relied on. *Clark* v. *Ruthnavaloo Chetti, 2 Mad. H. C., 296*, referred to. CHISHOLM *v.* GOPAL CHUNDER SURMA [I. L. R., 16 Calc., 711

8. ——— *Civil Procedure Code, s. 111—Suit for balance of account.*—The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease. The lease contained, amongst other provisions, one to the effect that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by arbitration; and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge or for any other cause for which the lessee is not responsible, he will be entitled to compensation from Government for all losses." The lessee died before the expiration of the lease, and the Magistrate of the district, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then [illegible]

Government against the representatives of the deceased lessee giving credit to the defendants for such amount, and claiming the balance due in respect of the last two instalments under the contract. *Held* that the sum of R 12,100 assessed in the manner above described could not strictly be regarded as a set-off. The suit was one for balance of account, and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favour. SECRETARY OF STATE FOR INDIA *v.* MADARI LAL I. L. R., 13 All., 296

9. ——— *Civil Procedure Code, ss. 111, 216—Cross-claims of the nature of set off.*—The plaintiffs agreed to purchase from the defendant certain timber. They paid part of the price in advance and took delivery of some part of the timber, but refused to take delivery of the rest, [illegible]

S. 111 of the Code of Civil Procedure is not exhaustive of the descriptions of cross-claim which may be allowed by way of set-off. *Clark* v. *Ruthnavaloo Chetti, 2 Mad., 296; Kistnasamy Pillay v. Municipal Commissioners for the Town of Madras, 4 Mad., 120; Kishorchand Champalal* v. *Madhowji Visram, I. L. R., 4 Bom., 407; Praji Lal* v. [illegible] *Panda* v. [illegible] 557, and [illegible] *L. R., 16* [illegible] DURGA PRASAD . . . . I. L. R., 15 All., 9

10. ——— *Right to set off a claim for unliquidated damages—Civil Procedure Code (Act X of 1877), s. 111—Costs—Act XXVI of 1864, s. 9.*—The provisions of the Civil Procedure Code (Act X of 1877) do not give the right to set off claims for unliquidated damages, but that Code does *not take away any right of set off, whether legal or equitable, which parties to a suit would have independently of its provisions.* Where, therefore, in a suit for the price of goods sold and delivered, the

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

defendant admitted that there was a sum of R1,159-12-0 due by him to the plaintiff, but sought to set off the sum of R972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for, it was held that, as the claim of the defendant against the plaintiff was connected with the same transaction and arose out of one and the same contract as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claims was capable of being imme-

to recover from the defendant, for breach of contract, —*Held* that, notwithstanding the provisions of s. 9 of Act XXVI of 1864, the plaintiff was entitled to his costs. KISHORCHAND CHAMPALAL *v.* MADHOWJI VISRAM . . I. L. R., 4 Bom., 407

11. — — *Right to set off a claim for an unascertained amount—Civil Procedure Code (Act XIV of 1882), s. 111.*—The provision of the Civil Procedure Code (Act XIV of 1882), s. 111, does not take away from parties any right to set-off, whether legal or equitable, which they would have had independently of that Code. And such right exists not only in cases of material debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in

for contribution, and where in such suit the defendants pleaded that, although the plaintiff had paid off the whole of the decree in question, he was not

separate suit BHAGBAT PANDA *v.* BAMDEB PANDA
I. L. R., 11 Calc., 557

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

12. ———— *Right to set off damages for breach of contract—Civil Procedure Code, 1882, s. 111—"Ascertained" sum.*—A suit

supply the wood as contracted for. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October

procedure, and was not intended to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions, that the right of set-off would be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arose out of one and the same transaction, or were so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit, and that as, in the present case, the claim sprang out of the same contract which the plaintiff sought to enforce, and could readily be determined in the same suit, it was equitable that it should be so determined *Gauri Sahai* v. *Ram*

—That the excess of the set-off in favour of the defendants over and above the claim of the plaintiff might properly be decreed to them, and that the set-off should be allowed, if at all, to its full extent, and not merely to the extent of defeating the claim. *Per* DUTHOIT, *J.*—That although the set-off might properly be admitted as an equitable protection to the defendants against being cast in the plaintiff's suit, the defendants could not, failing the provisions of s 111 of the Civil Procedure Code, be allowed to recover a sum of money from the plaintiff, they having paid no court-fees on that account PRAGI LAL *v.* MAXWELL . . . I L. R, 7 Mad., 284

13. ———— *Civil Procedure Code, 1859, s. 121—Suit or award determining several items—Mutual liability under award.*—*G* and *R* referred to arbitration disputes between them

both parties. Should one party neglect to pay or show carelessness in the matter, and should the other be obliged to pay the whole amount of any such debts, the latter shall be competent to realize from the former portion of the debt paid on his account, together with costs and interest, by the enforcement

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

payment." *R* sued to recover from *G* the money found to be due and payable to him under the award. *G* admitted the claim, but desired to set off half the amount of certain debts which were payable under the award by the parties jointly, and which he alone had satisfied. The lower Appellate Court deducted from the claim items of the demand admit-

not have referred *G* to a separate suit in respect of those items. GAURI SAHAI *v.* RAM SAHAI [7 N. W., 157

14. ——— *Suit for redemption, Decree in—Set-off of costs against mortgage-money—Lien of attorney—Civil Procedure Code, 1877, ss. 111, 221.*—The decree in a redemption suit directed the plaintiff (the mortgagor) to pay the mortgage-mor
directed the
of the suit.
set off the a
mortgage-mor
the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit. BRIJNATH DASS *v.* JUGGERNATH DASS I. L. R., 4 Calc., 742

S. C. BRIJONATH DASS *v.* JUGGERNATH DASS [4 C. L. R., 122

I. L. R., 15 All., 9

15. ——— *Civil Procedure Code (Act XIV of 1882), s. 221—Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt—Liability of mortgage for any balance—Redemption suit.*—The mortgagor is entitled to set off or deduct the amount of costs payable to

16. ——— *Insolvent Act, s. 39—Mutual credit—Civil Procedure Code, 1877, s. 111.*—Where there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent,

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under s. 39 of the Insolvent Act 11 and 12 Vict., c. 21, to set off the debt due from him to the insolvent against sums which may be claimed from him. MILLER *v.* BEER [6 C. L. R., 294

17. ——— *Civil Procedure Code, 1882, s. 111—Court-fee on set-off.*—In a suit to recover a sum of money due as wages, the plaintiff

as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant)

was not gone into. The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. *Held* that the defendant was entitled, under s. 111 of the Civil Procedure Code, to set off the amount claimed as due for goods sold on commission against the plaintiff's demand. *Held* also that the court fee payable on the claim for set-off was the same as for a plaint in a suit. AMIR ZAMA *v.* NATHU MAL . I. L. R., 8 All., 396

18. ——— *Liquidated sum due on bond—Suit for rent.*—A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set off against sums due for rent. WATSON & CO. *v.* BROJOSOONDUREE DEBIA . . . 16 W. R., 225

19. ——— *Debt due from deceased husband—Debt due to widow.*—A widow is liable for a debt contracted by her husband. Such debt may be set off against a debt due to her. GRISH CHUNDER LAHOORY *v.* KOOMAREE DABEA [1 W. R., Mis., 23

20. ——— *Lambardar—Co-sharer—Revenue, Payment of—Profits, Suit for share of.*—*Held* (SPANKIE, J., dissenting) that a lambardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers, was entitled, in

21. ——— *Purchase by patnidar of shares in zamindari—Set-off on payment of rent.*—The four defendants obtained jointly a patni lease of R, and subsequently purchased jointly a 5 annas share in the zamindari. Defendants 1 and 2 separated from 3 and 4, each taking 8 annas

SET-OFF—*continued*

1. GENERAL CASES—*continued*

of the patni and 2½ annas of the zamindari, and then defendants 3 and 4 sold their zamindari right in 2 annas and 15 gundas share to *K*, the plaintiff, retaining 5 gundas share on their own account. The plaintiff sued to recover the rent of 2 annas and 15 gundas from the defendants 1 and 2, who denied the plaintiff's claim, while they admitted that they were liable for 8 annas rent of the patni, treating themselves as their own zamindars for 2½ annas share in the zamindari, and they alleged payment of 5½ annas of the patni rent to the 8 annas shareholder in the zamindari, and a set off against the other 2½ annas against their own claim as zamindars *Held* that, as the defendants 1 and 2 were strangers to the transfer of the rights of defendants 3 and 4 to the plaintiff, they had, as between themselves and the plaintiff, a right still to do what they did formerly, namely, set off their patni liability against their zamindari right. GOOROO DYAL CHUCKERBUTTY *v.* KESHUB BIBEE . 20 W. R., 409

22 ———— *Rent, suit for—Rent paid in kind—Set-off allowed for—Account.*—In a suit for arrears of rent, where defendant [illegible]

23. ———— *Plea of payment in suit for arrears of rent—Indirect payment.*—In a suit by a zamindar for arrears of rent the defendant alleged that his tenure had been placed under the management of the Collector, and had so remained for a number of years, and that the Collector, from [illegible]

24 ———— *Suit for contri-* [illegible]

the sums paid not being in the nature of a set-off. GOOUN CHAND DUT *v.* HURI MOHUN DUT [12 C. L. R., 539

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

25. ———— *Civil Procedure Code, 1859, ss. 121, 195—Claim arising out of same* [illegible]

it had been made in a separate suit RADHA RAM DEB *v.* JAMES . . 20 W. R., 410

26. ———— *Decree for defendant on set-off where nothing found due to the plaintiff*—*Held* that a defendant may deny the [illegible]

[illegible] Bom., A. C., [illegible]

27. ———— *Civil Procedure Code, 1859, s 195—Counter-claim—Deductions allowed in ascertaining mesne profits.*—S. 195. Act VIII of 1859, which enabled a defendant to obtain a decree against a plaintiff in respect of a [illegible]

have been received, in the nature of allowances made for costs of cultivation or collection expenses. TILUCK CHAND *v.* SOWDAMINEE DASSEE [25 W. R., 275

28. ———— *Subordinate* [illegible]

recover R36-7 9 from the defendant under the [illegible]

[I. L. R., 12 Bom., 51

29. ———— *Civil Procedure Code, ss 111, 216—Suit for dissolution of partnership*—A suit for dissolution of partnership in which the claim was valued at R2,000, with a prayer [illegible]

of set-off may be raised in such a suit, and if in consequence of such plea the Court of first instance decrees in favour of the defendant a sum above R5,000, then by reason of the provision in paragraph ii, s. 216 of the Code, an appeal from the

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

decree will lie to the High Court, and not to the District Court. RAMJIWAN MAL *v.* CHAND MAL [I. L. R., 10 All., 587

30. —————— *Claim of different nature*—It is not equitable to allow a set-off against a claim relating to a particular account, stated, of a matter of another nature altogether KALEE KOOMAR CHUCKERBUTTY *v* HURO CHUNDER CHUCKERBUTTY . . . 17 W. R., 177

31. —————— *Amount in excess of jurisdiction of Court.*—A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognizable by it When a defendant pleads a set-off and claims a decree, the subject matter of the suit is no longer the mere claim of the plaintiff, but the cross-claim of both parties. RAM LAL *v.* LANCASTER . 3 N. W., 114

32. —————— *Unascertained sums.*—Setting off an unascertained sum against another is a mode of settlement which, if suggested to the parties as a compromise, may, with their

33. —————— *Civil Procedure Code, 1859, ss. 121, 195—Claim for unliquidated*

34. —————— *Unascertained damages—Civil Procedure Code, 1859, s. 121.*—

DYAL *v.* RAMDHUN DASS . . 3 Agra, 43

RAM LAL *v.* KOONDUN LALL . 3 Agra, 97

35. —————— *Separate debt—Joint and several debt—Directors.*—A separate debt

36. —————— *Joint and separate debts—Mutual dealings.*—*A* had dealings with a firm consisting of a father and two sons, who carried on business jointly. Shortly after the father's death, the two brothers separated, and *A* dealt with each

concern DHUNPUT SINGH *v* FORBES [1 Ind. Jur., N. S., 354

37. —————— *Costs—Omission*

ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE [16 W. R., 308

38. —————— *Suit for carriage of goods—Set-off for damages.*—In a suit for money claimed on account of the carriage of goods in which defendant pleaded non-indebtedness and a set-off on account of damage caused to the goods,—*Held* that

39. —————— *Suit for mesne*

GREEJA NUND OOPADHYA 5 W. R., 160

40. —————— *Unascertained*

dant at the time the suit was brought. GOCOOL COOMAR *v.* BHICHOOK SINGH . 22 W. R., 1

41. —————— *Civil Procedure Code, 1877, s. 111—Mortgage—Compensation for waste.*—The usufructuary mortgagee of certain land

DASS *v.* ASHRAF HUSAIN KHAN [I. L. R., 2 All., 252

42. —————— *Claim against deceased father—Right to appropriate property.*—Where a widow administering her husband's estate sued to recover certain moveable property wrongly appropriated by her son, who pleaded a set-off on account of a claim against his father,—*Held* that

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

defendant was rightly referred to a separate suit. MANLY *v.* MANLY . . . 14 W. R., 136

43. ———— *Civil Procedure Code, 1882, s. 111—Suit by creditor of deceased*—The heirs to *M*, deceased, appointed *A*, one of the heirs, manager of *M's* estate, with a view to the [illegible]

The sale-proceeds exceeded *Z's* share of such debt, and she sued the other heirs for contribution in respect [illegible]

such suit. ABUL HASAN *v.* ZOHRA JAN [I. L. R., 5 All., 289

44. ———— *Act VIII of 1859, s 121—Co-sharers—Suit for contribution.*—In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted,—*Held* the defendant was not entitled to set off under s. 121, Act VIII of 1859, the plaintiff's share [illegible]

the defendant as would entitle the defendant, as a matter of equity apart from legislative enactment to a set-off. HOSSEINA BIBI *v.* SMITH [13 B. L. R., 440 : 22 W. R., 15

45. ———— *Suit for contribution—Shares on zamindari and shikmi rights.*—[illegible]

[illegible] were in a certain sense opposing rights, still they [illegible]

46. ———— *Debts not mutual—Disputed claim for rent in suit for payments made to save estate.*—*A* and *B* were the proprietors of a jote, of which *B* leased half of his share to *C* as mirasidar. The zamindar brought a suit for rent of [illegible]

C's claim in the present suit or as a set-off. It is essential to the validity of a set-off that the debts should be mutual, due from and to the same parties and in the same right. Bengal Regulation VIII of 1819, s. 13, and Bengal Act VIII of 1869, s. 62, discussed. BHOIRUB CHUNDER DOSS *v.* HAFEZUNISSA KHATOON . . 2 C. L. R., 414

47. ———— *Suit for rent—Compensation for damage done in execution of decree.*—If the cultivator suffer damage in execution of a decree of the Civil Court, he may sue and claim compensation for such damage; but until such damage has been ascertained and decreed, it cannot be set off against a claim for rent. RAI GOBIND SINGH *v.* SOONDER PAL 2 Agra, Pt. II, 177

48. ———— *Claim for rent*—[illegible]

[illegible]

49. ———— *Account, Suit for—Cross-appeal.*—Of two appeals heard together [illegible]

account only, and not for the recovery of money, rendering it at least doubtful whether a set-off could be pleaded in defence, and as also no issue had been [illegible]

50. ———— *Civil Procedure Code (1882), s. 111—Counter-claim for damages—Costs of preparing a deed—Stamp duty.*—In December 1892 the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being unable to pay for it in accordance with that agreement, entered into a

SET-OFF—*continued*

1. GENERAL CASES—*concluded.*

supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendant's company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust in favour of trustees to be named by the plaintiffs for the purpose of

and approved by the defendants' solicitors The plaintiffs, having paid the solicitors' bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894 The defendants alleged that the plaintiffs

it was not a claim for an ascertained sum of money, and, that being so, they could not claim as of right to have it investigated in this suit. Nor was there any equitable ground for admitting the counter-claim, as it could not be doubted that there would be

execution of the deed DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.
[I. L. R., 21 Bom., 126

2. CROSS-DECREES.

51. ———————— *Decrees under Act X of 1859.—Quære*—Where the provisions of s. 209 of the Civil Procedure Code, 1859, were applicable to decrees passed under Act X of 1859. DE SILVA *v.* AMEER SHAHA . . . . 16 W. R., 303

There is now no distinction in this respect between rent decrees and other decrees.

52. ———————— *Award on private arbitration.*—An award of private arbitration *per se* did not come under the provisions of s. 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEERAJ SINGH *v.* DEEN DYAL SINGH
[11 W. R., 144

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

53. ———————— *Requisites for right—Decrees in same Court for execution.*—Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution. EAST INDIAN RAILWAY COMPANY *v.* HALL . . . 3 N. W., 104

DE SILVA *v.* AMEER SHAHA 16 W. R., 303

54. ———————— *Requisites for right—Decrees in same Court for execution—Civil Procedure Code, 1859, s. 209.*—The provisions of s. 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . 7 W. R., 480

Reversing on review, S. C. GOBINDNATH SANDYAL *v.* RAMCOOMAR GHOSE . 6 W. R., 21

HADOO SIRDAR *v.* JADOO MONEE DOSSEE
[17 W. R., 46

55. ———————— *Requisites for right—Decrees in same Court for execution.*—The decrees must be under execution at the same time. JUDOO NATH ROY *v.* RAM BUKSH CHUTTANGEE
[7 W. R., 535

56. ———————— *Requisites for right—Decrees not in same Court—Act VIII of 1859, s. 209.*—Act VIII of 1859, s 209, which provided for the set off of cross-decrees, applied only to decrees of the same Court or decrees sent to a

57. ———————— *Requisites for right—Decrees for definite sums—Civil Procedure Code, 1859, s. 209.*—In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. REZAOODDEEN HOSSEIN *v.* FUZLOONISSA
[5 W. R., Mis., 12

58. ———————— *Appeal from decree.*—A judgment-debtor is entitled to set off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. HURO PERSHAD ROY CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY
[5 W. R., Mis., 52

59. ———————— *Set off of joint decree—Civil Procedure Code (Act X of 1877),*

DIN DOYAL GUHO
[I. L. R., 9 Calc., 479; 13 C. L. R., 93

SET-OFF—*continued.*

2. CROSS-DECREES—*continued*

60. ——— *Civil Procedure Code, s. 246.*— Where a decree-holder holds a decree against several persons jointly, one of whom holds a decree against him singly, both decrees being executable in the same Court, it is competent to the holder of the joint decree, under the provisions of s. 246 of the Code of Civil Procedure, to plead such decree in answer to an application for execution of the decree against him singly. RAM SUKH DAS *v.* TOTA RAM [I. L. R., 14 All., 339

61. ——— *Joint decree—Decrees not between same parties—Civil Procedure Code, 1877, s. 246.*—*S* and two other persons held a decree for costs against *M* which did not specify the separate interests of each in the decree, and *M* held a decree for money against *S* alone, which he wished to treat as a cross decree under s 246 of Act X of 1877. *Held* that the decree held by *S* and the other persons was not a decree between the same parties as the parties to the decree held by *M*, and *M*'s decree could not therefore be treated as a cross decree under that section. MURLI DHAR *v.* PARSOTAM DASS [I. L. R., 2 All., 91

62. ——— *Execution by two decree-holders—Act VIII of 1859, s. 209.*—Where there were cross decrees, and one of the decree-holders

v. TARAK CHANDRA BHUTTACHARJEE [3 B. L. R., A. C., 114 : 11 W. R., 488

63. ——— *Civil Procedure Code, 1859, s 209—Attachment*—In April 1877 *M* sued *S* for money, and on the 10th May 1877 *S* sued *M* for money, both suits being instituted in the same Court In the meantime, on the 9th May 1877 *B* applied for the attachment of the money claimed by *M* in his suit, and obtained an order prohibiting *M* from receiving, and *S* from paying, any sum which might be found in that suit to be due by *S* to *M*. On the 23rd June 1877 *M* obtained

became absorbed in the one for the larger, and attachment could not affect it. BHUJHAWAN LAL *v.* SUKHRAJ RAI . . . I. L. R., 2 All., 866

64. ——— *Cross-decrees for mesne profits.*—Where there are cross-decrees for possession and mesne profits in respect to the same land, the earlier decree comprehending only a part of the land embraced in the latter, each party may take out execution and be entitled to receive wasilat separately. ANUND MOHUN HAJRAH *v.* SHIBO SOONDUREE DABEE . . . 16 W. R., 256

65. ——— *Cross-decrees for*

amount decreed to be paid by *S* to *B*. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . 12 W. R., 391

66. ——— *Decree not enforceable*—A decree which is incapable of being enforced cannot be set off against a decree which is alive HURO PERSHAD ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE . . . 16 W. R., 308

PROSUNNO COOMAR GHOSE *v.* SHAM LAL GUNGOPADHYA . . . . . 5 W. R., Mis., 8

HEMRAJ CHOWDHRY *v.* ASOODUN [5 W. R., Mis , 43

SET-OFF—*continued.*

1. GENERAL CASES—*concluded.*

supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendant's company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust in favour of trustees to be named by the plaintiffs for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures, at the expense of the company, and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of and supplemental to the agreement of December 1892. This agreement was signed by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors. The plaintiffs, having paid the solicitors' bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement [illegible]

claim damages against the plaintiffs for their alleged failure to carry out their part of the contract of 1892. Their counter-claim or set-off did not fall under s. 111 of the Civil Procedure Code (Act XIV of 1882), as it was not a claim for an ascertained sum of money, [illegible]

long for the money to which they were now legally [illegible]

execution of the deed. DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.

[I. L. R., 21 Bom., 126

2. CROSS-DECREES.

51. ——————— *Decrees under Act X of 1859.*—*Quære*—Where the provisions of s. 209 of the Civil Procedure Code, 1859, were applicable to decrees passed under Act X of 1859. DE SILVA *v.* AMEER SHAHA . . . . . 16 W. R., 303

There is now no distinction in this respect between rent decrees and other decrees.

52. ——————— *Award on private arbitration.*—An award of private arbitration *per se* did not come under the provisions of s. 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEERAJ SINGH *v.* DEEN DYAL SINGH

[11 W. R., 144

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

53. ——————— *Requisites for right—Decrees in same Court for execution.*—Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution. EAST INDIAN RAILWAY COMPANY *v.* HALL . . . 3 N. W., 104

DE SILVA *v.* AMEER SHAHA . 16 W. R., 303

54. ——————— *Requisites for right—Decrees in same Court for execution—Civil Procedure Code, 1859, s. 209.*—The provisions of s. 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . 7 W. R., 480

Reversing on review, S. C. GOBINDNATH SANDYAL *v.* RAMCOOMAR GHOSE . 6 W. R., 21

HADOO SIRDAR *v.* JADOO MONEE DOSSEE

[17 W. R., 46

55. ——————— *Requisites for right—Decrees in same Court for execution.*—The decrees must be under execution at the same time. JUDOO NATH ROY *v.* RAM BUKSH CHUTTANGEE

[7 W. R., 535

56. ——————— *Requisites for right—Decrees not in same Court—Act VIII of 1859, s. 209.*—Act VIII of 1859, s. 209, which provided for the set off of cross-decrees, applied only to decrees of the same Court or decrees sent to a Court for execution. Therefore where, on application [illegible]

Held that s. 209, Act VIII of 1859 did not apply. GIRISHCHANDRA LAHURY *v.* FAKIR CHAND

[B. L. R., Sup. Vol., 503 : 6 W. R., Mis., 72

57. ——————— *Requisites for right—Decrees for definite sums—Civil Procedure Code, 1859, s. 209.*—In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. REZAOODDEEN HOSSEIN *v.* FUZLOONISSA

[5 W. R., Mis., 12

58. ——————— *Appeal from decree.*—A judgment-debtor is entitled to set off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. HURO PERSHAD ROY CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY

[6 W. R., Mis., 52

59. ——————— *Set-off of joint decree—Civil Procedure Code (Act X of 1877),* [illegible], against the [illegible] amount of [illegible] the decree- [illegible] AL GUHO *v.* [illegible]

[I. L. R., 6 Calc., 479 : 15 C. L. R., 93

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

application, it was contended that the "subject-

that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for R1,439 so as to bring into operation the special rules of ss. 246 and 247 of the Code between him and the defendant. *Held* also that the plaintiff was one who, in the sense of s. 411, had succeeded in respect of part of the "subject-matter" of his suit, and on that part therefore a first charge was by law reserved and secured to the Government, which was justified in recovering it in these proceedings from the defendant, who was ordered by the decree to pay it in the same way as costs are ordinarily recoverable under the Code.

JANKI *v.* COLLECTOR OF ALLAHABAD [I. L. R., 9 All., 64

91. ——— ——— *Civil Procedure Code (Act XIV of 1882), ss. 233, 243, 546—Execution of assigned decree—Set-off against assigned decree partly executed*—*A B* had obtained a decree against *K* and *T*. After the decree had been partially satisfied, *A B* assigned it to *D*. Prior to

92. ——— *Civil Procedure Code, s. 246—Limitation.*—Under two decrees of the Sudder Dewany Adalat passed in 1864, *A* was entitled to two thirds and *B* to one third of certain immoveable property, with mesne profits in proportion. Each obtained possession of the immoveable property decreed to him. *B* appealed to the Privy Council from both decrees in respect of the two-thirds awarded to *A*. In April 1866, pending the appeal, *A* applied for an account of the mesne

SET-OFF—*concluded.*

2. CROSS-DECREES—*concluded.*

to be the amount so due, but, on application by *A*, stayed further execution pending the Privy Council's decision In 1873 the Privy Council dis-

might be set off against the amount claimed by *A*. *Held* that the question of the amount due to *A* up to the date when he acquired possession of the two thirds, and which had never yet been decided,

Civil Procedure Code, and at all events should be allowed on principles of natural equity. *Held* also

when the execution department had determined the amount due to *A*, that decision also would be a decree, and that s. 246 of the Code could then be applied. MATADIN *v.* CHANDI DIN [I. L. R., 10 All., 188

SETTLEMENT.

See ACT IX OF 1847. [I. L. R., 4 Calc., 103

See ASSAM LAND AND REVENUE REGULATION . I. L. R., 17 Calc., 819
[I. L. R., 24 Calc., 239

See CONFISCATION OF PROPERTY IN OUDH.
[14 Moore's I. A., 112
I. L. R., 4 Calc., 727
I. L. R., 12 Calc., 1
L. R., 12 I. A., 124

See COVENANT TO RENEW.
[1 B. L. R., A. C., 7

See DEED—CONSTRUCTION.
[I. L. R., 20 Bom., 310

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

Code is applicable to cross-decrees and not to cross-claims under one decree To make s 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held* therefore, where a decree for money of a Court of first instance directed that the money should be realizable from certain specific property of the defendant, and exempted his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree and restored that of the ... the defendant ... the High Court ... it, inasmuch as the plaintiff was only entitled to recover the judgment debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 247 were not applicable KALKA PERSHAD v. RAM DIN . I. L. R., 5 All., 272

86. — — — — — — *Costs—Two awards of costs in same decree—Execution of decree* —Where a Court makes two different awards of costs in one and the same decree, when it ought to have made a decree only for the difference between them —*Held* that execution could only be taken out for the difference between the two amounts awarded AMJUD ALI KHAN v. FAZUL HOSSEIN [19 W. R., 187

87. ————— *Conditional decree—Purchase-money—Costs—Civil Procedure Code, 1882, ss. 214, 221, 247—Decree in suit for pre-emption*—The decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s. 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vendor and vendee), on payment of the purchase-money within a fixed time, but that, on default of such payment, the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held*, applying, by analogy of ss. 221 and 247 of the Civil Procedure Code, the equitable doctrine of set off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that therefore the decree did not become null and void by reason that he had not deposited the full amount of the purchase money within time. *Degumburee Dabee* v. *Eshan Chunder Sein, B. L. R., Sup. Vol, 938; 9 W. R., 230; Jugo Mohun Bukshee* v. *Soorendro Nath Roy Chowdhry, 13 W. R., 106*; and *Brijnath Dass* v. *Juggernath Dass, I. L. R., 4 Calc., 742,* referred to. ISHRI v. GOPAL SARAN . . . . I. L. R., 6 All., 351

88. ————— *Civil Procedure Code (1882), s. 247—Cross-claims under the same decree—Costs under the same decree recoverable in different ways.*—S. 247 of the Code of Civil Procedure is not limited in its application to cases in which the remedy of each party against the other is of precisely the same nature. Thus, where one party to a suit was entitled to recover certain costs by means of the sale of hypothecated property, and the other party under the same decree was entitled to recover a smaller sum as costs from his opponent personally, it was held that s. 247 of the Code ap- ... WAN SINGH v. RATAN . I. L. R., 16 All., 395

89. ————— *Civil Procedure Code (1882), ss 246, 247—Execution of decree—Parties entitled under same decree to recover from each other.*—A plaintiff obtained a decree for the surrender to him of certain mortgaged property on his paying the defendants the mortgage amount within three months together with the value of improvements, and for the payment by defendants to him of the costs of suit He applied to recover ... mortgage amount and value of improvements payable by plaintiff to them. *Bhagwan Singh* v. *Ratan, I. L. R., 16 All., 395,* approved. SANKARA MENON v. GOPALA PATTAR . I. L R., 23 Mad., 121

90. ————— *Civil Procedure Code, ss. 246, 247, 411—Cross-decrees in same decree—Recovery by Government of Court-fees in pauper suit.*—A plaintiff suing *in formâ pauperis* to recover property valued at R60,000 obtained a decree for R1,439 The Court, with reference to ... her to him, with reference to ss 246 and 247 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his R1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

application, it was contended that the "subject-

that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for R1,439 so as to bring into operation the special rules of ss. 246 and 247 of the Code between him and the defendant. *Held* also that the plaintiff was one who, in the sense of s. 411, had succeeded in respect of part of the "subject-matter" of his suit, and on that part therefore a first charge was by law reserved and secured to the Government, which was justified in recovering it in these proceedings from the defendant, who was ordered by the decree to pay it in the same way as costs are ordinarily recoverable under the Code.

JANKI *v.* COLLECTOR OF ALLAHABAD

[I. L. R., 9 All., 64

91. — — *Civil Procedure Code (Act XIV of 1882), ss. 233, 243, 546—Execution of assigned decree—Set-off against assigned decree partly executed.*—A B had obtained a decree against K and T. After the decree had been partially satisfied, A B assigned it to D. Prior to

unexecuted portion of the decree which had been assigned to D. KRISTO RAMANI DASSEE *v.* KEDAR NATH CHAKRAVARTI . I. L. R., 16 Calc., 619

92. — *Civil Procedure Code, s.*
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portion.
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Council
thirds an
appeal.
profits due to him after setting off the mesne profits

SET-OFF—*concluded.*

2. CROSS-DECREES—*concluded.*

to be the amount so due, but, on application by A, stayed further execution pending the Privy Council's decision. In 1873 the Privy Council dismissed B's appeal. In 1885 A, in execution of the Privy Council's decree, applied for R50,000 as mesne profits in respect of the two thirds. B at the same time applied that the R18,000 declared in 1867 to be due to him in respect of the one-third might be set off against the amount claimed by A. *Held* that the question of the amount due to A up to the date when he acquired possession of the two-thirds, and which had never yet been decided,

accordance with the spirit of ss. 246, 247 of the Civil Procedure Code, and at all events should be

order of January 1867 was equivalent to a decree for the amount declared thereby as due to B; that when the execution department had determined the amount due to A, that decision also would be a decree, and that s. 246 of the Code could then be applied. MATADIN *v.* CHANDI DIN

[I. L. R., 10 All., 188

SETTLEMENT.

See ACT IX OF 1847.

[I. L. R., 4 Calc., 103

See ASSAM LAND AND REVENUE REGULATION . I. L. R., 17 Calc., 819

[I. L. R., 24 Calc., 239

See CONFISCATION OF PROPERTY IN OUDH.

[14 Moore's I. A., 112
I. L. R., 4 Calc., 727
I. L. R., 13 Calc., 1
L. R., 13 I. A., 124

See COVENANT TO RENEW.

[1 B. L. R., A. C., 7

See DEED—CONSTRUCTION.

[I. L. R., 20 Bom., 310

SETTLEMENT—*continued.*

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
[14 W. R., 1
15 W. R., 141
I. L. R., 24 Calc., 887

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES—BENGAL REGULATION XI OF 1822.

See STAMP ACT, 1879, s. 3, CL. 19.
[I. L. R., 7 Mad., 349
I. L. R., 21 Mad., 422

See STAMP ACT, 1879, SCH. I, ART. 57.
[I. L. R., 8 Mad., 453
I. L. R., 20 Bom., 210

See VILLAGE CHOWKIDARS ACT, SS. 48, 51
[I. L. R., 21 Calc., 626
4 C. W. N., 814

——— Construction of—

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS . I. L. R., 12 Calc., 663
[I. L. R., 12 Mad., 393

——— Gordon Settlement.

See HEREDITARY OFFICES ACT.
[4 C. W. N., 517
I. L. R., 20 Bom., 423

See SERVICE TENURE.
[I. L. R., 15 Bom , 13
I L. R., 18 Bom., 22

——— made by guardian.

See HUSBAND AND WIFE.
[I. L. R., 10 Calc., 951

——— on marriage.

See MARRIAGE SETTLEMENT.
[1 Ind. Jur., N. S., 290

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 514

——— Post-nuptial.—

See TRANSFER OF PROPERTY ACT, s. 53
[I. L. R., 22 Calc., 185

——— Suit to set aside—

See PARTIES—PARTIES TO SUITS—GOVERNMENT.
[13 B. L. R., 118 : 21 W. R., 327
22 W. R., 52

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION I. L. R., 18 Calc., 146

——— Wife's equity to—

See HUSBAND AND WIFE.
[11 B. L. R., 144

1 CONSTRUCTION.

1. ——— Agreements made at time of settlement, Duration of.—*Held* on the construction of an "ikrarnamah" and settlement "roobkari" that it was binding on the plaintiffs only for the currency of settlement. In general

SETTLEMENT—*continued.*

1. CONSTRUCTION—*continued.*

engagements made at the time of settlement ought to be considered *primâ facie* as intended to subsist only for the time of settlement. DIAL SINGH *v.* JAWAHIR SINGH . . . 2 Agra, 108

IKRAM ALI KHAN *v.* LUDWA . 2 Agra, 113

2. ——— Effect of settlement—*Duration of, and right created by, settlement—Transfer of proprietary right.*—Where a settlement of a talukh, although it ran for twenty years only, was with a person professing to be a proprietor,—*Held* that the settlement conferred a proprietary right, and not a limited interest; and that the plaintiff's vendor, having been admitted to a share in the settlement with a maliki allowance, became a co-sharer in the proprietary interest, which proprietary right had been transferred to the plaintiffs by their purchase. POGOSE *v.* AOZAN BIBEE
[18 W. R., 274

3. ——— *Settlement by Government of land on which stood a hât—Calculation for purpose of settlement—Tolls—Hât—Reg. XXVII of 1793.*—A settlement of land (on which stood a hât) by the Government to a private person, such settlement being arrived at by taking into calculation the profits of the hât, does not amount to a grant of the tolls, but of the land only, the reason for looking at the tolls being to ascertain the value of the land Such a settlement therefore does not imply a monopoly which will enable the holder to restrain other persons from setting up another hât close by. RAKHAL DAS ADDY *v.* DURGA SUNDURI DASI. DURGA SUNDARI DEBI *v.* RAKHAL DAS ADDY
[I. L. R., 17 Calc., 458

4. ——— *Summary Settlement Act (Bom. Act VII of 1863)—Nature of settlement under that Act—Settlement made and sanad issued under a mistake—Quit-rent paid by inamdars to Government under such settlement—Refund—Void agreement—Contract Act (IX of 1872), ss. 20, 65—Sanad, Meaning and effect of.*— [illegible]

SETTLEMENT—*continued.*

1. CONSTRUCTION—*concluded.*

paid in respect of the wanta lands. A settlement under Bombay Act VII of 1863 is an agreement effected by proposal and acceptance (see s. 2), and is subject to the ordinary rules applicable to contracts [illegible]

parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract Such a mistake under s 20 of the Contract Act (IX of 1872) renders the agreement void. The settlement as to the wanta lands might be treated as distinct from that [illegible]

merely declares what by s 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as [illegible]

2. RIGHT TO SETTLEMENT.

5. —— Claim to settlement after resumption—*Beng. Reg. II of 1819—Ex-lakhirajdar—Limitation*—Long possession gives no title to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed, and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. GOLACK CHANDRA CHOWDHRY *v.* ALI MOLLAH

[8 B. L. R., 528 note

6. - - Claim to permanent settlement after expiration of temporary one—*Forfeiture of right by conduct.*—When a temporary settlement expires, whether the holder thereof had been the proprietor of the land within the meaning [illegible]

On remand an order was made declaring the plaintiff entitled to the permanent settlement instead of the defendants, and confirmed on special appeal, subject to the proviso that such declaration would not entitle her to dispossess them if they were in possession as patnidars. WATSON & Co. *v* BROJO SOONDUREE DEBIA . . . 17 W. R., 376

7. ——— Purchase of zamindari rights during maafi grant—*Rights on expiry of maafi grant.*—An auction-purchaser of the rights and interest of one of several zamindars who at the

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*continued.*

time of the purchase held only certain nankar land in lieu of their zamindari right during the continuancy of the maafi grant by Government to another party stands in the place of the zamindar, not in respect of the nankar land only, but in respect of all the right to settlement as zamindar after the maafi grant comes to an end. GOKUL PERSHAD *v.* RUGHONATH . . . . . 3 Agra, 245

8. ——— Right among co-sharers— [illegible]

allowance, and such arrangement was to last for the term of settlement only,—*Held* that after the expiry of the settlement such co-sharers were, if the revenue authorities thought fit, entitled to be allowed to engage for their shares. KOONWER SINGH *v.* SHIB DYAL . . . . ., 3 Agra, 297

9 ——— Right on resumption—*Suit to set aside settlement.*—In a suit by a person claiming certain lands which have been resumed by the Government [illegible]

[13 B. L. R., F. B., 118: 21 W. R., 327

10 ——————— *Ghatwali tenures*—*Suit against Government for settlement—Limitation.*—A ghatwali tenure was resumed by the Government under Bengal Regulation II of 1819. After the resumption, *H N*, the former holder of the [illegible]

11. - - —— Right to settlement of person whose tenure is not cancelled—*Lease by Government after purchase at sale for revenue*—*A*

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*continued.*

was the owner of a talukh in a zamindari which was purchased by the Government at an auction-sale for arrears of revenue. The Government did not cancel the talukh, but settled it with *A* for twelve years When the term was expired, the Government refused to make a new lease with *A*, and instead leased it for a year to *B*. *Held* that the refusal of the Government to settle the land with *A* in no way affected his right to a settlement on the expiration of the lease to *B*. AHSANOOLLAH *v.* KRISTO GOBIND DOSS [2 C. L. R., 592

12. ——— Owner of parent estate—*Accretion to estate—Estates separately numbered.*—Certain lands accreted to an estate, No 667, and

of the temporary settlement, the plaintiff, as owner

13. ——— Right to pottah of waste lands—*Alleged failure to cultivate or pay assessment.*—The plaintiff sued, as the mirasidars of a village, to establish their right to the grant of a pottah of certain waste land of the village which had been granted to some of the defendants The Collector, who was made a defendant, stated that the hookum-

others in consideration of the plaintiffs' preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements. *Held* that the plaintiffs were entitled to the relief sought for. COLLECTOR OF MADRAS *v* RAMANUJA CHARIYAR. KULLAPPA NAIK *v.* RAMANUJA CHARIYAR . . . . . . 4 Mad., 429

14. ——— Right of ex-lakhirajdar—*Resumption by Government—Limitation.*—An ex-lakhirajdar whose lands have been resumed by Gov-

See KRISHNA CHANDRA SANDYAL CHOWDHRY *v.* HARISH CHANDRA CHOWDHRY . 8 B. L. R., 524

S. C. KRISTO CHUNDER SUNDYAL *v.* KASHEE KISHORE ROY CHOWDHRY . . 17 W. R., 145

15. ——— Right of shikmi talukhdars—*Tenants of lakhirajdars—Resumption by Government of lakhiraj tenures.*—Shikmi talukhdars under lakhirajdars, whose lands have been resumed by Government, cannot sue for a settlement: they can only claim to have their shikmi rights upheld. GRISH CHUNDER ROY *v.* BOYDONATH DEY [W. R., 1864, 262

3. EVIDENCE OF SETTLEMENT.

16. ——— Evidence necessary to establish creation of talukhs—*Shikmi talukhdars—Registration of tenure.*—The registration of a

decennial settlement as part of the zamindari for which the jumma is assessed, does not afford any

BUN MOYEE DEBIA [3 W. R., P. C., 5: 10 Moore's I. A., 165

17. ——— Evidence of loss of proprietary right—*Possession of sir land.*—The possession of a share in an estate on settlement may or may not be accompanied by the possession of sir land;

18. ——— Settlement of noabad talukh in Chittagong—*Power of Government to make settlement—Waste lands—Resumption—Kabuliat, Effect of—Acceptance of kabuliat by the landlord—Ratification—How far the acts of Government officers bind the Government—Reg. III of 1822, s. 5, cl. 1—Reg. VII of 1822, s. 7, cl. 1—Evidence—Presumption of due performance of official acts—Acquiescence—Acceptance of rent after term of settlement.*—The plaintiff sued the Secretary of State for India in Council for the declaration that a certain noabad mehal of his in the district of Chittagong was a permanent talukh, not

published by an istahar to that effect. It was found on the evidence that the talukh was not shown to have been in existence before 1800, and the settlement

SETTLEMENT—*continued.*

3. EVIDENCE OF SETTLEMENT—*concluded.*

proceedings of that year and the variation of rent from time to time did not support the plaintiff's contention. *Held* that the kabuliat of 1836 was merely an offer on the part of the talukhdar for the time being and was not binding on the Government, its terms not having been accepted either by the Government or by any duly authorized officer thereof; that both by law and by the special instructions issued for the guidance of settlement officers, no settlement could be binding on the Government unless confirmed [illegible] having regard to the presumption in favour of the due performance of official acts. *Held* also that, even assuming that the officers of the Government induced by their act and conduct a belief in the talukhdar that the kabuliat had been accepted by the Government, or that a permanent settlement had been sanctioned by the Government, that did not amount to a ratification of the kabuliat, inasmuch as such conduct of the officers was in violation of their duty as such officers and in direct contravention of the express orders of the Government. *Held* also that the acceptance by the Government of rent at the old rate from the talukhdar for a long time after expiration of thirty years did not amount to an acquiescence in the terms of the kabuliat. Unsettled and unoccupied waste land, not being the property of any private owner, must belong to the State. PROSUNO COOMAR ROY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . I. L. R., 26 Calc., 792
[3 C. W. N., 695

4. MODE OF SETTLEMENT.

19. —— Procedure on making fresh settlement—*Beng Reg. VII of 1822, s. 14*— [illegible]
[illegible] ERNMENT . . . . 6 C. L. R., 365

20. —— Power of Collector to alter settlement—*Recognition of title by settlement officer—Beng Reg VII of 1822, s. 20.*—Where the plaintiff's title was recognized by the settlement officer in 1836, who assigned an allowance of 5 per cent. on the Government demand,—*Held* that the Collector had no power in subsequent years during the pendency of this completed settlement to inter- [illegible]

SETTLEMENT—*continued.*

4. MODE OF SETTLEMENT—*concluded.*

notification of Government extend to revenue officers an authority that the law did not allow to them. HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR
[2 Agra, 258

21. [illegible]
tenant for cultivation is irregular and unauthorized. RAIJI NAROTTAM *v.* PURUSHOTTAM GIRDHAR
[2 Bom., 244 : 2nd Ed., 233

5. SUBJECTS OF SETTLEMENT.

22. —— What passes by settlement — [illegible]
BECKWITH . . . . . 5 W. R., 175

23. —— Non-mirasi lands left waste by pottahdar—*Claim of former occupant.*—Non- [illegible]
[1 Mad., 12

24. —— Waste lands—*Lands held on* [illegible]
[illegible] 1 Mad., 10[illegible]

6. EFFECT OF SETTLEMENT.

25. —— Effect on rights of third parties—*Sanad granted by settlement officers, Effect of*— [illegible]
[1 Bom., 171

26. —— Effect on ex-maafidar— [illegible]
[illegible] Agra, 2[illegible]

27. —— Effect on maafidar—*Settlement with maafidar—Payment of revenue.*—Where a plot of maafi land was on resumption settled with the ex-maafidar, who engaged for the Government

SETTLEMENT—*continued.*

6 EFFECT OF SETTLEMENT—*continued.*

revenue for the term of settlement, and the settlement was made under s. 5, Regulation XIII of 1825, and paragraph 151, circular order, Sudder Board of Revenue, as provided by s 5, Regulation XXXI of 1803,—*Held* that they were in possession as owners, and on the expiry of the settlement the mere fact of its having expired would not deprive them of the right of being assessed with revenue as proprietors of maafi land, for where there has been a grant of soil, and possession taken and long continued thereunder, the ownership thereof vests in the grantee, although the grant as to exemption from payment of revenue may be invalid and subject to assessment. TOOLSEE RAM *v.* NARAIN SINGH [3 Agra, 265

28. ———— *Resumed maafi lands, Settlement of—Adverse possession.*—Where owing to the refusal of the original possessor of a

LAH *v.* MAHOMED MOHIB-OOL-LAH 1 Agra, 231

29. ———— Liability for rent—*Beng.*

under Act X of 1859 for a mitigation or re-settlement of rent HURO PERSHAD CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY 6 W. R., Act X, 107

30. ———— Lakhirajdar in Assam—*Holder of resumed grant—Right of ejectment.*—

eject a tenant who has no right of occupancy or lease of any kind. JULLOW SURMA PATWAREE *v.* MAJHUR RAM ATOI BOORHA BHUKUT [16 W. R., 202

31. ———— Effect of resumption and settlement of lakhiraj—*Invalid lakhiraj*—Assessment of revenue by Government upon invalid lakhiraj land after resumption does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mokurari lease granted by the lakhirajdar previously to the settlement and during the time he was in possession of the land as lakhiraj. PRATAB NARAYAN MOOKERJEE *v.* MADHU SUDAN MOOKERJEE . 8 B. L. R., 197: 16 W. R., 35

32. ———— Abadkari talukhdar—*Acceptance of farming leases—Sale of Government right.*—A Government settlement, whether permanent or farming, so far from destroying the rights of a talukhdar, always preserves them if there be really a dependent tenure. Neither the acceptance of farming leases by the talukhdar *qua* farmer, subject to the Government proprietary right, nor the sale of that Government right, in any way, *ipso facto,* extinguishes any talukhdari right existing in the abadkari talukhdar in that capacity, if otherwise valid. HURO PERSHAD BHUTTACHARJEE *v* BHYRUB CHUNDER MOJOOMDAR . . 8 W. R., 391

33. ———— Settlement with several persons—*Presumption as to equality of rights.*—In the settlement of a talukh, after resumption by Government with thirteen persons, it is not to be presumed that all thirteen persons had equal rights, simply because the settlement was made with all of them jointly, particularly where the settlement proceedings show that the question of the extent of the shares was in dispute, and that the settlement was made jointly with the whole without prejudice to title. GOOROO CHURN PODDAR *v.* HAFEEZA BIBEE [7 W. R., 366

34. ———— *Omission to settle boundaries and proportion of assessment which each cultivator ought to pay—Liability to pay*

by the Collector,—*Held* that the fact of pottahs having been issued separately to each tenant, stating the share of land occupied, without defining the hold-

S. C. affirmed on appeal to Privy Council. BRETT *v.* ELLAIYA [12 W. R., P. C., 33: 13 Moore's I. A., 104

35. ———— Settlement with talukhdar after his refusal to re-settle at increased rent—*Waiver of refusal to pay enhanced rent.*—Where, upon a talukhdar's refusal at the end of the period of his settlement to re-settle with Government

the talukhdar in exactly the position in which he would have stood had he never refused to pay the increased rent. OONEE COOMAR ROY *v* KUMOLA KANT ROY . . . . . 11 W. R., 38

36. ———— Private rights

SETTLEMENT—*continued.*

6. EFFECT OF SETTLEMENT—*concluded.*

(1865 the zamindari title was sold, and the purchaser now (1869) sues to recover possession of certain specified land. The lower Appellate Court, finding that none of the persons above mentioned had possession within twelve years immediately preceding the

Held also that the plaintiff's claim was traceable solely through *M*, from whom he bought; that at the time of settlement Government has nothing more than a right of action by virtue of its being proprietor, and not the right of action *S* had as auction-purchaser; and only he former right passed by the settlement. RUGHOONATH SURMAH *v.* GOBIND CHUNDER ROY

[14 W. R., 170

d by ision *f 1825* a re-

settlement of land by the Government as the ruling power, with persons entitled to such settlement under Bengal Regulation XI of 1825 and Act XXXI of 1858, confers upon the settlers, the owners of the

7. MISCELLANEOUS CASES.

38. ———— Permanent lease made by proprietor pending resumption.—Where the proprietor of resumed lakhiraj land leases it for valuable consideration, and at a stipulated jumma, while the settlement proceedings are under reference to the higher revenue authorities for confirmation, he cannot afterwards turn round upon the lessee and plead that he had no power to grant a permanent lease, on the ground that the settlement with him was temporary, and not permanent. AMEER ALI *v.* AMEEROONISSA BEGUM . . 11 W. R., 11

40. ———— Right of tenants to deduc-

SETTLEMENT—*continued.*

7. MISCELLANEOUS CASES—*concluded.*

41. ———— Powers of Revenue Boards—*Resumption—Cancelment of settlement.*—A settlement of a resumed lakhiraj estate being made by the Collector with the plaintiff, "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at any time. HARLAL TEWARI *v.* COLLECTOR OF BHAUGULPORE

[3 B. L. R., Ap., 82; 12 W. R., 6

42. ———— Settlement of a Government khas mehal—*Enhancement of rent—Reg. VII of 1822—Beng. Act III of 1878—Beng. Act VIII of*

enhancement of rent in force at the time of such enhancement. *D'Silva v. Raj Coomar Dutt, 16 W. R., 153; Enayetoollah Meah v. Nubo Coomar*

TANDA . . . . I. L. R., 16 Calc., 586

8. EXPIRATION OF SETTLEMENT.

43. ———— Revocation of sanad—*Bom. Act VII of 1863, s. 7—Jurisdiction of Civil Court.*—Where a sanad by way of summary settlement of land revenue has been granted by Government under

has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit-rent, fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent, fixed by the sanad, payable to Government; and such grantee will *be declared to have taken the sanad as a trustee for* the rightful owner. Where Government had granted seven sanads to certain garasis in respect of lands, part of which had been previously sold by the garasis

and their heirs, representatives, and assigns *Quære*—Whether a Civil Court can give relief, either by

SETTLEMENT—*concluded.*

8. EXPIRATION OF SETTLEMENT—*concluded.*

reforming or cancelling such sanads against mistakes, other than those relating to ownership, which may be found to exist in the sanads DALSANG BHAYSANG *v.* COLLECTOR OF KAIRA

[I. L. R., 4 Bom., 367

44. ———— Liability to ejectment—*Dependent talukhdars.*—Dependent talukhdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements. HUROGOBINDO DOSS *v.* KALA CHAND SHAHA . . . 6 W. R., Act X, 26

[illegible]

46. ———— Shikmi talukhdari right—*Payment in lieu of shikmi talukhdari right*—Where a shikmi talukhdar accepted from Government [illegible]

[24 W. R., 247

SETTLEMENT AWARD.

See CASES UNDER ACT XIII OF 1818.

SETTLEMENT OFFICER.

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130) . I. L. R., 1 Bom., 586

See MADRAS FOREST ACT, s. 4.
[I. L. R., 17 Mad., 193

See PUBLIC OFFICER.
[I. L. R., 14 Bom., 395

See SERVICE TENURE.
[I. L. R., 1 Bom., 586

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION . I. L. R., 18 Calc., 146

———— Act or order of—

See BENGAL TENANCY ACT, s. 104.
[I. L. R., 20 Calc., 579
I. L. R., 23 Calc., 257

SETTLEMENT OFFICER—*continued.*

See DECREE—CONSTRUCTION OF DECREE—HINDU WIDOW I. L. R., 17 Calc., 246

See KHOTI SETTLEMENT ACT, SS. 20 AND 21 . . I. L. R., 18 Bom., 244

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.
[I. L. R., 16 All., 209

See LIMITATION ACT, 1877, ART. 14.
[I. L. R., 18 Bom., 244

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 23 Calc., 257

———— Application to—

See GUJARAT TALUKHDARS ACT, s. 10.
[I. L. R., 16 Bom., 408

———— Decision of—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT, . I. L. R., 18 All., 172

See CASES UNDER KHOTI SETTLEMENT ACT, SS. 17 AND 20.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622
[I. L. R., 21 Calc., 935

———— Entry in record of—

See CASES UNDER KHOTI SETTLEMENT ACT, s. 17.

———— Order on appeal from—

See SPECIAL OR SECOND APPEAL—ORDERS [illegible]

———— Power of—

See BENGAL TENANCY ACT, SS. 101—115.
[I. L. R., 20 Calc., 577
I. L. R., 21 Calc., 378
I. L. R., 27 Calc., 364

See BENGAL TENANCY ACT, s. 102.
[I. L. R., 21 Calc., 38
I. L. R., 23 Calc., 244

See BENGAL TENANCY ACT, s 103.
[I. L. R., 19 Calc., 641, 643

———— Statement of facts by—

See EVIDENCE ACT, 1872, s. 35.
[I. L. R., 21 Bom., 695

———— Suit to set aside order of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION I. L. R., 13 Calc., 245
[I. L. R., 15 Calc., 765
I. L. R., 18 Calc., 146

SETTLEMENT OFFICER—*continued.*

1. ——— Duty of settlement officer —*Entries in wajib-ul-urz*—A settlement officer should not receive for entry in the wajib-ul-urz of a village a mere expression of the views of a proprietor or enter it upon the records relating to the village, the wajib-ul-urz being intended to be the official record of local customs. UMAN PARSHAD *v.* GANDHARP SINGH . I. L. R., 15 Calc., 20 [L. R., 14 I. A., 127

2. ——— Power of settlement officer —*Question of payment and right to possession between mortgagor and usufructuary mortgagee.*—The duty of the settlement officer is to record the names of those whom he finds in possession of right, or whom he finds to have been wrongfully dispossessed of right within a certain period; but it is not his duty to determine the question whether the mortgagor in a usufructuary mortgage is entitled to possession by reason of the satisfaction of the debt out of the usufruct. BHYRO RAI *v.* GOLAB SINGH [3 Agra, 303

3. ——— *Powers of, in making entry in jummabundi.*—A settlement officer is bound to record in the jummabundi the existing rights of cultivators, and cannot impose an enhanced rent without notice on those entitled. If he enters a higher rate in spite of protest, such entry does not conclude the tenant from pleading non liability. LESLIE *v.* DOORGA MONEE DOSSEE. WATSON & Co. *v.* DOORGA MONEE DOSSEE . 21 W. R., 410

4. ——— *Act XIV of 1863 —Application under Act X of 1859, s. 23*—The powers which the Government was authorized by Act XIV of 1863 to confer on settlement officers were limited to powers for the decision of suits of the nature mentioned in s 23 of Act X of 1859 or in Act XIV of 1863, and there was no authority given to [illegible]

[illegible] [4 N. W., 281

5. ——— *Act XIV of 1863, s. 8—Resumption and assessment*—The powers given by s. 8 of Act XIV of 1863 to a settlement officer for the decision of [illegible]

6. ——— *Power to refer* [illegible]

SETTLEMENT OFFICER—*concluded.*

the second clause of s. 162. S 10 of Act XIV of 1863 enacted that, if a suit for enhancement of rent be brought before any officer empowered under s. 8 [illegible]

PUNCHUM SINGH *v.* HOORMUTOONNISSA [5 N. W., 64

7. ——— *Power to increase rent—Consent of parties—Where increased rent* [illegible]

REAZOODDEEN MAHOMED *v.* MCALPINE [22 W. R., 540

8. ——— *Power of, in Sonthal Pergunnahs—Reg III of 1872—Reference in settlement cases —Quære*—Whether, having regard to Regulation III of 1872 and the notification by the Lieutenant-Governor, dated 7th May 1872, a valid reference can be made in a settlement case in the Sonthal Pergunnahs by a settlement officer. TARINI PROSAD MISSER *v.* MAHAMMAD CHOWDHRY [6 C. L. R., 555

SHAREHOLDER.

——— Liability of—

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

——— Right of—

See COMPANY—MEETINGS AND VOTING. [I. L. R., 15 Bom., 164

See COMPANY—RIGHTS OF SHAREHOLDERS. [I. L. R., 19 Bom., 1 L. R., 21 I. A., 139

SHARE WARRANTS.

——— Stamp on—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT. [I. L. R., 20 Calc., 676

SHARES.

See CASES UNDER COMPANY

——— Agreement relating to sale of—

See STAMP ACT, 1879, SCH. I, ART. 5. [I. L. R., 13 Mad., 255 I. L. R., 14 Bom., 316

——— Assignment of—

See INSOLVENCY—ORDER AND DISPOSITION. [I. L. R., 2 Bom., 542

——— Cancellation of—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS. [I. L. R., 20 Bom., 654

SHARES—*continued.*

———— "Holding shares," Meaning of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[I. L. R., 17 Bom., 197

———— Sale of—

See CONTRACT—CONTRACTS FOR GOVERN- [illegible]

———— Transfer of—

See CASES UNDER COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

———— Transfer of, Registration of—

See BANK OF BENGAL.
[I. L. R., 3 Calc, 392

1. ———— Transfer of shares—*Blank transfer—Cause of action.*— Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer This Bank applied to the [illegible] the [illegible] sold [illegible] the [illegible] his own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares,—*Held* also that they were justified in refusing to register. *Held* also that the plaintiff, having received back from his vendors the price of his shares, had no cause of action. KNOWLES *v.* NATIONAL BANK OF INDIA 2 B. L. R, O. C, 158

2. ———————— *Transfer by way of pledge—Right of transferee to have transfer registered and to have dividends.*—*A* and *B*, proprietors of indigo factories, sold them to the *E B* [illegible] term of two years. *A*, being indebted to *C*, deposited the shares with him as a security for the debt. *C* gave notice of this to the company before he made the advance to *A*, and the company assented to the deposit. *A* and *B* afterwards became jointly indebted to the company in respect of the covenant and guarantee. *Held* that *C* was entitled to have the deposit of the shares registered in the books of the company, and to be paid dividends upon them. PIETSCH *v.* EASTERN BENGAL INDIGO COMPANY
[1 Ind. Jur., N. S., 278

But where the deposit by *A* was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend,—*Held* tha, under this contract of *A*, *C* could not receive the dividend, though he could under a contemporaneous general power of attorney from *A*. ROYAL BANK OF INDIA *v.* EASTERN BENGAL INDIGO COMPANY . . . 1 Ind. Jur., N. S., 281

3. ———————— *Blank transfers*— [illegible] in the N Bank at R4 premium per share. (Signed) Sree Coomar Sircar, Broker" The bought note exactly corresponded. On the 23rd April plaintiff received from defendants the following. "With reference to the sixty N Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, *viz.*, two for twenty-five shares each and one for ten shares." On the 26th April plaintiff sent to defendants sixty N Bank shares, some standing in the name of *H* and some in the name of *P*, accompanied by transfers, all executed by *P* alone. These shares were all returned by the defendants, with the following memorandum: "The accompanying shares in the N Bank purchased for delivery to-day are not in order." Later on the same day, the 26th, plaintiff took personally to defendants the same sixty shares with transfers, executed some by *H* and some by *P*, the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transferee was left blank. These shares were also rejected by the defendants as not in order. Plaintiff then, on April 27th, about 1 P.M., had the shares registered in his own name, and, within two hours afterwards, sent them to the defendants with corresponding transfers, and with the following letter: "In compliance with request in your memo- [illegible] shares, and they were re sold at a loss. The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benami holder for *H* and *P*. The articles of association of the N Bank required transfers to be in the form F appended to Act XIX of 1857. The [illegible] enough to show that the vendor bound himself to tender a proper conveyance to his vendees. (3) That the document of conveyance must be complete at the

SHARES—*concluded.*

time of tender, or capable of being then made complete. (4) The transfers, with a blank for the name of the transferee, were incomplete and insufficient, the vendor showing no authority from *H* and *P*. (5) That the Court below must deal with the question of fact, whether or no the mention of Friday, the 17th, instead of Thursday, the 26th, was a mistake; and *semble* that, if the defendants had received the blank transfers and acted upon them, the waiver would have rendered them complete. LALL MOHUN MULLICK *v.* PEARY CHAND MITTER [1 Ind. Jur., N. S., 383

4. ———— **Sale of shares for future delivery**—*Refusal of purchaser to accept—Readiness and willingness to deliver—Pledge of shares to third person.*—Where a contract is made for the future delivery of shares, and the purchaser, before the delivery day, gives notice to the vendor that he (the purchaser) will not accept the shares, the vendor is thereby exonerated from giving proof of his readiness and willingness to deliver the shares. *Semble*—The mere fact that such shares are pledged to a third person is not sufficient to show that the vendor is not ready and willing to deliver them, if [illegible]

5. ———————— *Equitable assignment of right to sue—Readiness and willingness to deliver—Tender—Constructive tender.*—A contract for the delivery of shares at a future day is a contract that can be assigned in equity, and the assignee of such a contract can, in his own name, maintain a suit to recover damages for its breach in the Civil Courts in India. In such a suit the plaintiff [illegible]

[8 Bom., A. C., 133

SHEBAIT.

See CASES UNDER HINDU LAW—ENDOWMENT.

SHERIFF.

———— **Liability of—**

See ESCAPE FROM CUSTODY. [6 Moore's I. A., 467

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 2 Bom., 258

SHERIFF—*continued.*

———— **Sale by, under writ of fieri facias.**

See HIGH COURT, JURISDICTION OF — CALCUTTA—CIVIL . . 24 W. R., 366 [8 C. L. R., 4

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 1 Calc., 55 [I. L. R., 3 Calc., 806 L. R., 5 I. A., 116 I. L. R., 6 Calc., 356

1. ———— **Right of poundage**—*Satisfaction of decree after attachment, but before sale.*—Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full. *Held* that the Sheriff was entitled to poundage upon the amount so paid in satisfaction of the debt, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage. ROYCHURN DUTT *v.* AMEENA BIBI . . I. L. R., 2 Calc., 385

PEARSON *v.* MADHUB CHUNDER GHOSE [I. L. R., 2 Calc., 387 note

2. ———————— "*Debt levied by execution*" — *Ambiguity in document* — *Usage* — *Discharge of defendant, Effect of, on Sheriff's right.*—In a suit brought in the Bombay Court of Small Causes to recover Sheriff's poundage on the amount endorsed on a warrant of arrest in execution [illegible]

[4 Bom., O. C., 139

SHERIFF—*concluded.*

3. ——————— *Compromise after attachment of property and before sale*—Where property is attached by the Sheriff after judgment, and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. IN THE MATTER OF BOMBAY JOINT STOCK CORPORATION. IN RE SHERIFF OF BOMBAY

[6 Bom., O. C., 22

4. ——————— *Sale by Sheriff—Civil Procedure Code (Act XIV of 1882), s. 244, cl. (c), ss. 287, 311, 313—Belchamber's Rules and Orders of High Court, Calcutta 382—386—Deficiency in area of land—Application by purchaser to set aside sale or for compensation.*—A purchaser at an execution sale of immoveable property held by the Sheriff applied to set aside the sale

the judgment-debtor, the former was not the representative in interest of the latter, and therefore s. 244 of the Civil Procedure Code did not apply. *Ishan Chunder Sirkar v. Beni Madhub Sirkar, I. L. R., 24 Calc., 62,* applied. Sales by the Sheriff differ

[4 C. W. N., 13

SHIKMI TALUKHDARS.

See SETTLEMENT—EVIDENCE OF SETTLEMENT.

[3 W. R., P. C., 5 : 10 Moore's I. A., 185

See SETTLEMENT—RIGHT TO SETTLEMENT.

[W. R., 1864, 262

SHIP.

——————— at anchor, Duty of—

See SHIPPING LAW—COLLISION

[I. L. R., 24 Calc., 627
L. R., 24 I. A., 129

——————— Loss of—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 13 Bom., 15
[I. L. R., 22 Bom., 189

——————— Measurement of—

See MERCHANT SHIPPING ACT, ss. 24, 26.

[I. L. R., 14 Bom., 170

SHIP—*concluded.*

——————— Seaworthiness of—

See BILL OF LADING . 8 W. R., 35
[I. L. R., 13 Bom., 571
I. L. R., 19 Bom., 639

See CONTRACT—CONDITIONS PRECEDENT.

[2 B. L. R., O. C., 127

See INSURANCE—MARINE INSURANCE.

[5 Moore's I. A., 361
Cor., 5 : 2 Hyde, 107

SHIP, ARREST OF—

See ARREST—CIVIL ARREST.

[1 Hyde, 253

See COSTS—SPECIAL CASES—ADMIRALTY OR VICE-ADMIRALTY

[I. L. R., 17 Calc., 84

See SALVAGE I. L. R., 17 Calc., 84

——————— Deposit of security with Marshal—*Application for arrest of deposit in another action—Admiralty Court, Practice of.*—The ship *M*, having been arrested in an action promoted by the master of the ship *N* for damage caused by a collision, in which the *N* with her cargo was totally lost, deposited with the Marshal of the Court certain Government paper as security to answer the alleged damage, on which the *M* was released. The cargo of the *N* had been insured, and on the loss thereof the Insurance Company paid the amount of the

[10 B. L. R., Ap., 3

SHIP, REGISTERING OF—

British ship—*Stat. 3 & 4 Vict., c. 56—Act X of 1841—Ship built in foreign port.*—A ship built in a foreign port in India in 1817, within the limits of the Company's charter, by foreigners, and which sailed under foreign flags until 1833, when it was then and thereafter owned by and belonged

for the purpose of trade within the limits of the Company's charter. CRAWFORD *v.* SPOONER

[4 Moore's I. A., 179

SHIP, SALE OF—

See BOTTOMRY BOND . 5 B. L. R., 258
[6 B. L. R., 323

1. ——————— Sale in execution of decree—*Form of transfer—Merchant Shipping Act, s. 55*

SHIP, SALE OF—*continued.*

—*Mandamus to Registrar to register transfer—Jurisdiction of Small Cause Court—Execution of Small Cause Court decree.*—The transfer of a ship should be in the form, or as near the form as may be, laid down by the Merchant Shipping Act; therefore, where a ship sold in execution was transferred by the Clerk of the Court, in a form usual in sales in execution, but quite irregular, having reference to the Merchant Shipping Acts, the Court refused a mandamus to order the Registrar to register the transfer. *Quære*—Whether a ship can be sold in execution of a decree of the Calcutta Small Cause Court, and *quære* whether the Clerk of the Small Cause Court can execute a transfer of a ship, supposing she is saleable, in execution of that Court's decree. IN THE MATTER OF THE SHIP "SHAH CALLANDER" . . 1 Ind. Jur., N. S., 263

2. ———— *Merchant Shipping Act (25 & 26 Vict., c. 63), s. 3—Transfer of a ship—Equitable title—Destruction after agreement for sale—Suit to recover purchase-money.*—The [illegible]

[illegible]

plaintiff was not entitled to recover. RAMANADAN CHETTI *v.* NACOODA MARACAYAR

[I. L. R., 21 Mad., 395

3. ———— *Contract between* [illegible]

[illegible]

SHIP, SALE OF—*concluded.*

of sale to the purchaser. A British ship having, in [illegible]

[illegible]

as prescribed in s. 55 of the Merchant Shipping Act, and the mere sale and delivery to the purchaser did not pass a title to him. ESAU AHMED *v.* JASSIM BINSAFF . . . 2 Ind. Jur., N. S., 251

SHIPMENT.

———— Contract for—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 12 Bom., 50
[I. L. R., 13 Bom., 15
I. L. R., 16 Bom., 389
I. L. R., 17 Bom., 129
I. L. R., 18 Bom., 299
I. L. R., 22 Bom., 189
I. L. R., 18 Mad., 63

See SALE OF GOODS.
[I. L. R., 17 Bom., 62

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—DAMAGES FOR BREACH OF CONTRACT.
[I. L. R., 19 Mad., 304

———— Meaning of—

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R., 17 Bom., 129

See EVIDENCE — PAROL EVIDENCE — VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R., 17 Bom., 129

SHIPMENTS.

[illegible]

SHIPMENTS—*concluded.*

account, the defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held* that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own account or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment *separately*, and were not compelled to decide on an average of the shipments taken all together. SHEARMAN v. FLEMING . . 5 B. L. R., 619

2. ——— *Bills of lading fraudulently signed—Title of endorsees for value against holder of mate's receipts who has not paid.*—The plaintiffs agreed with the defendant *K M* to purchase and ship cotton on account of *K M* and [illegible]

receipts, induced the master of the ship to sign bills of lading for the said 609 bales and endorsed over the bills of lading for 310 of such bales to *J C &* [illegible]

310 bales to the exclusion of *J C & Co.* RAJARAM GOVINDRAM v. BROWN . . 7 Bom., O. C., 97

SHIPPING LAW.

[illegible]

2. ——— Collision—*Collision in port—Port Rules, 1856—Liability of ship for damage.*—The ship *T* having got adrift in a dark night, in consequence of a collision, the harbour-master tried to [illegible]

from subsequent collisions. The owners of the *A* [illegible]

SHIPPING LAW—*continued*

of any of the vessels subsequently collided with. *Held* that liability for damages occasioned by collision rests, *primâ facie*, on the colliding vessel That a [illegible]

THE MATTER OF THE "THALATTA" Bourke, Ad., 1

Held on appeal that an accident to the gear of a ship does not of itself alone render her liable for damages for a collision of which it is a remote occasion; and that a ship at anchor in the port should *keep a look-out, and be ready to take all reasonable means for her own safety in an emergency.* "THALATTA" v. "ANNE" Bourke, A. O. C., 87

3. ——— *Liability of ship for fault of pilot—Port Rules, 1856—Act XXII of 1855.*—The ship *H*, in charge of a pilot (acting as [illegible]

a ship is *primâ facie* liable for damages occasioned by a collision resulting from an error in judgment of the officer in charge of her *Held* also that a vessel is exempted from liability for the fault of a pilot in charge of her,—first, where a master is authorized to [illegible]

4. ——— *Collision from bore in the river—Inevitable accident.*—The ship *Thames* was lying a mere hulk, waiting for repair [illegible]

5. ——— *Moving vessel in harbour—Act XXII of 1855—Negligence of pilots—Bombay Harbour Rules—Lights on vessels, Duty to carry or show.*—The taking of a steam-vessel in a

SHIPPING LAW—*continued.*

trial trip from Mazagon to the sea and back again is a moving of such vessel within the meaning of s. 12 of Act XXII of 1855. For such a trip, therefore, the employment of a pilot is compulsory. Where the

proof that the master or crew were also in fault in any particular which contributed, or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them. Rules of Bombay harbour with regard to the showing of lights by vessels in the harbour considered. Independently of special

dark boat as the wrong-doer; and if a vessel be either under way or at anchor at night in a channel, fair way, or ordinary track or path of other vessels,

YUSUF *v.* PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY . 6 Bom., O. C., 98

6. ——— *Admiralty suit—*

7. ——— *Damage by ship under way colliding with another at anchor—Burden of justifying—Duty of ship at anchor.—* with ing at urden way. n the

SHIPPING LAW—*continued.*

between the tug and the brig. She could, however,

chain as soon as there was danger, but hove on her

8 ——— Jettison — *Right to general average contribution—Right of shippers of jettisoned cargo—Default of master—Right of ship-*

property of others has been thereby preserved. Such exceptions as that recognized where the average loss

SHIPPING LAW—*continued.*

of the cargo in order to save the remainder and the ship,—*Held* that innocent owners of the jettisoned cargo were entitled to general average contribution; but that the owners of the ship were not entitled

of the ship and cargo saved; and second, he has a direct claim against each of the owners of the ship and cargo, for a *pro rata* contribution towards his indemnity. Contribution can be recovered by the owner of jettisoned goods either by direct suit or by enforcing through the ship-master, who is his agent for this purpose, a lien on each parcel of goods saved, belonging to each separate consignee, for a due proportion of his claim. STRANG, STEEL & Co *v.* SCOTT & Co. . . . I. L. R., 17 Calc., 362 [L. R., 16 I. A., 240

9.———Maritime lien—*Sale of cargo to repair ship.*—The captain of an English ship, being unable to raise funds on a bottomry-bond to repair damage caused to the ship by stress of weather, sold portion of the cargo for such purpose and repaired the ship. In a suit by the owners of the cargo

dence of the mortgage. MUTHAYA *v.* MUTHAYA [I. L. R., 5 Mad., 334

10.———*Authority of captain to bind owners for repairs of ship.*—The

particular cases of necessity BAYLEY *v.* TARUKNAUTH PORAMANIC . Bourke, O. C., 283

11.———*Master's lien on ship for wages—Act I of 1859, s. 58.*—The master of a ship has by Statute (Act I of 1859, s. 58) a lien upon the ship for the recovery of wages due. IN THE MATTER OF THE BARQUE "ANNE" [2 Hyde, 273

12.———*Master's lien on ship for wages—Repairs, Lien for—Act I of 1859, ss. 55, 56* – The *Persia*, on a return voyage from Jedda to Singapore, was driven into Bombay harbour through stress of weather. The owner, resident at Singapore, though frequently applied to, omitted to furnish funds to repair her, or to pay the wages of the mariners, and the master being unable to raise funds for these purposes on the credit of the ship or owner, on the application of the mariners, the ship was, in order to levy their wages, sold by the Magistrate under the provisions of ss. 55 and 56 of Act I of

SHIPPING LAW—*concluded.*

1859. The master, who had been engaged at Singapore, then brought a suit on the admiralty side of

wages and passage-money. IN RE THE "PERSIA." EX-PARTE GARDNER . 6 Bom., O. C., 138

13.———*Lien on ship for repairs in port—Ship in dock.*—A ship in the river cannot be said to be delivered over to the possession of those who execute repairs; consequently no lien arose for repairs done. *Secus*—If the ship had been under repair in a dock belonging to the plaintiffs. SHIB CHUNDER DASS *v.* COCHRANE [Bourke, O. C., 388

SHIPPING ORDER.

1. ———Construction of order—*"Ready to receive cargo."*—The words "ready to receive cargo" inserted in a shipping order mean that the ship, on the day named in the shipping order, shall be ready to receive a full cargo by whomsoever offered, and not merely ready to receive the quantum of cargo mentioned in the shipping order. TAYLOR *v.* BROOKE . . 1 Bom, Ap, 48

2. ——— *Measurement—*

to be bound was a measurement at the screw house;

upon a right to measure or go into an enquiry of what was the size of the bales. SCHILIZZI & Co. *v.* COX, STEEL & Co. . 17 W. R., 545

SHROFFS, USAGE OF—

See HUNDI, LIABILITY ON. [I. L. R., 1 Bom., 23

SIGNATURE.

———Acknowledgment of, by testator.

See WILL—ATTESTATION. [I. L. R., 1 Bom., 547

———Alteration of contract after—

See CASES UNDER CONTRACT—ALTERATION OF CONTRACTS — ALTERATION BY PARTY.

———Appearance of—

See PROBATE—PROOF OF WILL. [I. L. R., 10 Calc., 65 L. R., 18 I. A., 132

SIGNATURE—*continued.*

———— Cancellation of—

See Contract—Alteration of Contracts—Alteration by the Court. [I. L. R., 3 Bom., 242

———— Comparison of—

See Special or Second Appeal—Grounds of Appeal—Evidence, Mode of dealing with Marsh., 323 [22 W. R., 272

———— of Jailor.

See Civil Procedure Code, 1882, s. 87. [4 B. L. R., O. C., 51

———— of Judge

See Execution of Decree—Transfer of Decree for Execution and Power of Court, etc. [I. L R., 23 Calc, 480

———— of Magistrate, Warrant without—

See Penal Code, s 186 [I. L R., 23 Calc, 696

———— of witness to bond.

See Contract—Alteration of Contracts—Alteration by Party. [I. L. R., 7 Bom., 418 I. L. R., 12 Calc., 313 I. L. R., 15 Bom, 44 I. L. R., 15 Mad., 70

———— Proof of—

See Evidence—Civil Cases—Miscellaneous Documents—Signature. [1 Mad., 164 I. L. R., 11 Bom., 690

See Evidence Act, s. 73 . 21 W. R., 6

———— Sufficiency of—

See Contract—Alteration of Contracts—Alteration by Party [8 B L. R., 305 11 W. R., 216

———— to Memorandum of Association, Effect of—

See Company—Articles of Association and Liability of Shareholders. [I. L R, 12 Bom., 647 I L R, 14 Bom, 196

See Limitation Act, 1877, s. 19 (1871, [illegible]

[illegible] 13 C. L. R., 112 I L. R., 5 Bom, 88, 89 I. L. R, 5 Calc., 303 L R., 7 I. A., 8 I. L. R, 18 Bom, 586

SIGNATURE—*concluded.*

See Mortgage—Foreclosure—Demand and Notice of Foreclosure [I. L. R., 18 All., 59

See Practice—Criminal Cases—Signature of Magistrate. [I. L. R., 6 Mad., 396

See Warrant of Commitment. [I. L. R, 6 Mad., 393

See Cases under Will—Attestation.

See Will—Execution . 21 W. R., 84 [I. L. R., 25 Calc, 911

1. ———— Signature of Rajah—*Title* [illegible]

2. ———— Signature of Magistrate—*Lithographed stamp of signature.*—A Magistrate ought not to use a lithographed stamp of his signature. Queen *v.* Dedar Nushto . 14 W. R., Cr., 81

SÍR LAND.

———— Description of—*Entry in revenue records, Effect of.*—The mere entry in the revenue records of land as sír will not make it sír land. Sír land is land which at some time or other has been cultivated by the zamindar himself, and which, although he may, from time to time, for a season, demise to shikmis, he designs to retain as resumable for cultivation by himself or his family whenever his requirements or convenience may induce him to resume it Budley *v.* Bukhtoo . 3 N. W., 203

SLANDER.

See Defamation I. L. R., 13 Mad., 34

See Libel . I. L. R., 14 Bom., 97

See Parties—Adding Parties to Suits—Plaintiffs . I. L. R., 1 Mad., 383

See Right of Suit—Witness [I. L. R., 15 Calc., 264 I. L. R., 10 All., 425

See Witness—Civil Cases—Privileges of Witnesses [I. L. R., 15 Calc., 264 I. L. R., 10 All., 425 I. L. R., 11 Mad., 477

———— of title.

See Declaratory Decree, Suit for—Declaration of Title. [I. L. R., 1 Mad., 65

1. ———— Action for slander—*Misjoinder—Special damage*—An action for slander cannot be brought jointly against several defendants: separate actions should be brought against each

SLANDER—*continued.*

Quære—Whether words implying "you are a drunkard, thief, cheat, and the paramour of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage. NILMADHUB MOOKERJEE *v.* DOOKEERAM KHOTTAH [15 B. L. R., 161

2. ——————— *Misjoinder—Special damage.*—An action for slander may be brought jointly against several defendants where the words spoken are not actionable *per se*, but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants. WOOZEERUNNISSA BIBEE *v.* MAHOMED HOSSEIN . . . . 15 B. L. R., 166 note

3. ——————— *Omission to give courtesy title in petition.*—The omission of a mere courtesy cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong. SITARAMA KRISHNA RAYADAPPA RANGA RAZ *v.* SANYASI RAZU PEDDA BALIYARA SIMHULU [3 Mad., 4

4. ——————— *Slander and assault—Special damage.*—Special damages are not necessary to be proved in a case of slander and assault. HOSSEIN *v.* BAKIR ALI [W. R., 1864, 302

5. ——————— *Verbal abuse—Hindus—Special damage.*—In a suit between Hindus in the Bombay mofussil, damages may be recovered for mere verbal abuse without proof of actual damage resulting therefrom to the plaintiff. KASHIRAM VALAD KRISHNA *v.* BHADU BAPUJI [7 Bom., A. C., 17

6. ——————— *Damages for verbal abuse*—Damages cannot be claimed for mere verbal abuses or threatening language. PHOOLBASEE KOER *v.* PARJUN SINGH . 12 W. R., 369

7. ——————— *Verbal abuse—Special damage.*—While *C* was giving his evidence in open Court, in a suit of *A* against *B*, *A*, with the object of inducing the Judge to disbelieve *C's* testimony, said to the witness that he was a drunkard. *Held* that the words were actionable without proof of special damage. SRIKANT ROY *v.* SATCORI SHAHA . . . . . 3 C. L. R., 181

See SREENATH MOOKERJEE *v.* KOMUL KURMOKAR [16 W. R., 83

KALI KUMAR MITTER *v.* RAMGATI BHUTTACHARJI [6 B. L. R., Ap., 99 : 16 W. R., 84 note

KANOO MUNDLE *v.* RAHUMOOLLAH MUNDLE [W. R., 1864, 269

GHOLAM HOSSEIN *v.* HUR GOBIND DASS [1 W. R., 19

TUKEE *v.* KHOSHDEL BISWAS . 6 W. R., 151

OSSEEMOODDEEN *v.* FUTTEH MAHOMED [7 W. R., 250

GOUR CHUNDER PUTEETUNDEE *v.* CLAY [8 W. R., 256

SLANDER—*concluded.*

8. ——————— *Defamation—Action for abuse, no special damage being alleged—Damages, Measure of.*—The rule of English law

defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. *Semble*—An action will not lie for vulgar abuse or hasty expressions, but for malicious or culpable oral defamation an action will lie. Vindictive damages should not be awarded, and a distinction should be drawn in awarding damages when the defendant acts from carelessness and when he acts maliciously. In the latter case the plaintiff is entitled to full compensation for the pain suffered and in the former to a sum sufficient to establish his innocence of the charges made PARVATHI *v.* MANNAR . . . . I. L. R., 8 Mad., 175

9. ——————— *Cause of action—Defamation—Verbal abuse—Special damage.*—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN *v.* HAIDAR [I. L. R., 12 Calc., 109

10. ——————— *Defamation—Damages — Consequential damage.* — A suit for

Shaha, 3 C. L. R., 181, followed. TRAILOKYA NATH GHOSE *v.* CHUNDRA NATH DUTT [I. L. R., 12 Calc., 424

11. ——————— *Cause of action—Damages for insult, loss of reputation, and mental pain by the use of abusive language—Suit for libel and slander—Special damage*

bastard), soor (pig), baper beta (son of the father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage.

SLAUGHTER-HOUSE.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 7 B. L. R., 409, 510 [25 W. R., Cr., 72

SLAUGHTER-HOUSE—*concluded.*

1. ——— Offence of using unlicensed slaughter-house—*Beng. Act VII of 1865, s. 7—Slaughter-house license—Transfer of slaughter-house*—*R* was fined by the Deputy Magistrate for using an unlicensed slaughter-house. He subsequently gave an ijara or lease to *A* to carry on the business. *R* was prosecuted again for evading the law by "slaughtering cattle or allowing cattle to be slaughtered" without a license. He was fined R200 by the Deputy Magistrate. On appeal to the Sessions Judge, he was acquitted. On the motion of the Municipal Commissioners for a rule to set aside the order of the Sessions Judge, it was held (*per* JACKSON, *J.*) that *R*, by giving a lease to *A*, had parted with his interest, and had ceased to have any power to allow or disallow the slaughtering of cattle, that s. 7 provides penalties only, and does not describe an offence or relate to a conviction. It is quite another question whether the act itself is an offence irrespective of s. 7, and whether *R* could be dealt with as an abettor. *Per* MITTER, *J.* (dissenting).—The Judge has found that the lease was given by *R* with the avowed object of continuing the slaughter-house, and admittedly for the express purpose of evading the law; the case therefore falls within the express words of the section, "or allows cattle to be slaughtered." IN THE MATTER OF THE PETITION OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA

[6 B. L. R., Ap., 28: 14 W. R., Cr., 67

2.——— *Beng. Act VII of 1865, s. 1—Servant of licensee*—No person is liable to any penalty under s. 1, Bengal Act VII of 1865, except a person who, without a license, uses a place or building as a slaughter-house, either by letting it out for such purpose or by employing servants and

THE SUBURBS OF CALCUTTA *v.* ZAMIR SHAIKH [16 W. R., Cr., 4

3. ——— Notice to licensees of

RE HALDANE . . . . 6 W. R., Cr., 77

SLAVERY.

See UNLAWFUL COMPULSION [I. L. R., 19 Calc., 572

1. ——— Act V of 1843—*Mahomedan law—Succession—Walla—Emancipated slaves.*—Assuming that, by the walla rule of the Mahomedan law, the heirs of the master who emancipates a slave are entitled to the property of which the emancipated

SLAVERY—*continued.*

slave dies possessed to the exclusion of his natural heirs, the effect of s. 3, Act V of 1843, which enacts "that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that the person from whom the property may have been

only where the person whose property is claimed has been emancipated after the passing of the Act, but also where he has been emancipated before its passing.

bound, in constructing it, to give it the widest remedial application which its language permits, and cannot consequently limit it to those cases only in which the person from whom property is inherited

[I. L. R., 3 Bom., 422: 5 C. L. R., 11 L. R., 6 I. A., 137

In the same case, in the Court below, it was held

to such master, in his lifetime, to recover, as such heir, property in the hands of persons descended from her, is one the cognizance of which is barred by s. 2 of the Act AJMUDDIN KHAN *v* ZIA-UNNISSA BEGUM . . . . . 12 Bom., 156

2. ——— Spiritual slavery of disciple to guru—*Act V of 1843—Agreement to become*

predecessor was invalid, and for delivery of the

"slaves" of the head of the adhinam, but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth, and in a suit (compromised) of the year 1854 the present pretensions of the adhinam had been denied *in toto* *Held* that the agreement of the head of the muth to become the "slave" of his guru could have no legal operation since 1843, and that the

SLAVERY—*concluded.*

adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN

[I. L. R., 10 Mad., 375

SLAVERY (CRIMINAL CASES).

1. ———— Penal Code, s. 370—*Buying or disposing of girl as a slave.*—*R*, having obtained [illegible] intent [illegible] person [illegible] could [illegible] under [illegible] *undur Bukhut, 3 N. W., 146,* remarked upon. EMPRESS OF INDIA *v.* RAM KUAR . I. L. R., 2 All., 723

2. ———— *Treating kidnapped girl as slave.*—If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an [illegible]

3. ———— *Obligation of Judge to try charge of.*—The Sessions Judge was held bound to try the accused upon his commitment [illegible]

[10 W. R., Cr., 16

4. ———— *Meaning of term.*—*S* transferred to *A* for R25 his rights in the person of *B*, a girl of thirteen years. In a document [illegible] describ[illegible] from *I* [illegible] slave [illegible] Code. [illegible]

[I. L. R., 7 Mad., 277

SMALL CAUSE COURT, MOFUSSIL.

SMALL CAUSE COURT, MOFUSSIL —*continued.*

SMALL CAUSE COURT, MOFUSSIL —*continued.*

See APPEAL—ORDERS
[I. L. R., 11 Mad., 130
I. L. R., 15 Mad., 89
I. L. R., 22 Calc., 734
I. L. R., 19 Mad., 391

See DISTRICT JUDGE, JURISDICTION OF
[I. L. R., 11 Mad , 130
I. L. R , 24 Bom., 310

See LOCAL GOVERNMENT.
[I. L. R., 9 Mad., 112

See RES JUDICATA — COMPETENT COURT —SMALL CAUSE COURT CASES.

See REVIEW—POWER TO REVIEW.
[I. L. R , 5 Calc., 699

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 3 Bom., 219
[I. L. R., 8 Bom., 230
I. L. R , 10 Bom., 69
I. L. R , 9 Bom , 174, 237
I. L. R., 12 Bom., 31, 486
I. L. R., 22 Bom., 729
I. L. R., 14 Bom., 371

———— Claim under decree of—

See DECLARATORY DECREE, SUIT FOR — DECLARATION OF TITLE.
[I. L. R , 3 Calc , 612

———— Clerk of, Bond for performance of duties of—

See PRINCIPAL AND SURETY—RIGHTS AND LIABILITIES OF SURETY.
[I. L. R , 1 All., 87

———— Judge of—

See SALE IN EXECUTION OF DECREE —DISTRIBUTION OF SALE-PROCEEDS
[I. L. R., 3 All., 710
I. L. R , 9 Bom., 174
I. L. R., 4 Bom., 472
I. L. R , 15 Mad., 345
I. L. R , 20 Bom., 377
I. L. R., 16 Bom., 683
I. L. R , 21 Calc , 200

———— Jurisdiction of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY
[2 B. L. R., A. C., 109

See BENGAL RENT ACT, 1869, s 93.
[I. L. R., 1 Calc , 183

See CONTEMPT OF COURT — CONTEMPTS GENERALLY . 2 B. L. R., A. C., 188

See SHIP, SALE OF.
[1 Ind. Jur., N. S., 263
2 Ind. Jur., N. S., 251

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS

———— Transfer of decree of—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC
[I. L. R., 5 Bom., 680
I. L. R., 8 Bom., 230
4 Mad., 331
24 W. R., 151
3 C. L. R., 558
14 W. R., 398
3 C. L. R , 30
[I. L. R., 6 All., 247
I. L. R , 10 Bom., 65
I. L. R., 18 Bom., 61

1. LAW OF SMALL CAUSE COURTS, MOFUSSIL

1. ———— Law of Civil Courts—*Matters*

CHURN MOJOOMDAR 13 W. R., 148

2. ———— Rules and orders in Military Code.—*Held* that the rules and orders in the Military Code are not binding on a Small Cause Court. RAICHAND MANGAL *v* ABDULLA AMRUDDIN KOTVAL [5 Bom , A. C , 99

2 JURISDICTION.

3. ———— General cases —*Act XI of 1865, s 12—Act XLII of 1860, s. 6* —Small Cause Courts have sole jurisdiction within their local limits, there-

4. ———— *Suits cognizable by Village Munsif under Mad Reg. IV of 1816, s 5.*—A Small Cause Court had concurrent jurisdiction to try suits for a sum not exceeding R10, cognizable by a Village Munsif under s 5, Regulation IV of 1816. PARASOORAMA PILLAY *v.* RAMASAWMY *alias* COOLLA RAMASAWMY . 5 Mad., 45

5. ———— *Village Courts Act (Mad. Act I of 1889), s. 13—Civil Procedure Code, s 15—Jurisdiction of Small Cause Courts to hear suits cognizable by Village Munsif* —The term "Court of lowest grade" in the Civil

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKHAN *v.* KADARSA . . . I. L. R., 13 Mad., 145

6. ——————— *Suits cognizable by District Munsif in jurisdiction of Small Cause Court.*—A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognizable by the District Munsif on the Small Cause Court side. *Held* that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHELLAM CHETTY *v.* GANGATHARAM AIYAN . . . 5 Mad., 287

7. ——————— *Suit not cognizable against some of the defendants.*—A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHOTAM LAKHMIRAM *v.* PEMA HARJI [I. L. R., 21 Bom., 121

8. ——————— *Suit for sum on bond the whole amount of which is beyond jurisdiction.*—A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that it is upon a bond the amount of which is beyond its jurisdiction. SUKEE MONEE DEBIA *v.* HUREEMOHUN MOOKERJEE 6 W. R., Civ. Ref., 6

9. ——————— *Suit on kabuliat under which more than R500 are payable.*—That jurisdiction of a Small Cause Court, in a suit on a kabuliat for damages not exceeding R500, is not affected because damages exceeding that sum may be payable under the same kabuliat. SMITH *v.* GOPAL SHEIKH . . . 3 W. R., S. C. C. Ref., 14

10. ——————— *Suit for portion of sum due under agreement.*— Where the plaintiff [illegible] excess of its jurisdiction.—*Held* that the suit was cognizable by a Court of Small Causes NARASIDAYYR *v.* MARANA KAUNDAN . . 2 Mad., 440

11. ——————— *Suit for interest on bond for more than R500.*—Where a suit was brought for interest amounting to less than R500, due upon a bond for R1,000, not then payable,—*Held* that a Court of Small Causes had jurisdiction [illegible] [2 Mad., 460

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

CHETU NARAYANA PILLAY *v.* ATAMPERUMAL AMBALOM . . . . . 4 Mad., 447

12. ——————— *Suit for profits of land—Prayer for account—Question of title.*— [illegible] different nature. NARAYAN BHASKAR *v.* BALAJI BAPUJI . . . I. L. R., 21 Bom., 248

13. ——————— *Separate causes of action each within Munsif's jurisdiction.*—Several [illegible] of action. CHOCKALINGA PILLAI *v.* KUMARA VIRUTHALAM . . . . 4 Mad., 334

14. ——————— *Act XI of 1865—Act IX of 1850, s. 34—Cause of action. Di-* [illegible] DHOLCHAND *v.* PIR SAHEB JIVA MIYA [I. L. R., 7 Bom., 134

15. ——————— *Provincial Small Cause Courts Act (IX of 1887), s. 23—Civil Proce-* [illegible] Act, and returned the plaint to be presented to a [illegible]

16. ——— Dwelling or carrying on business—*"Dwelling"—Actual residence.*—The actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there [illegible]

17. ——————— *Dwelling—Casual residence—Act XLII of 1860, s. 4.*—Mere casual presence, or even residence for a temporary purpose, without the intention of remaining, is not dwelling

SMALL CAUSE COURT, MOFUSSIL —*continued*.

2. JURISDICTION—*continued*.

within the jurisdiction of a Small Cause Court within the meaning of s. 4 of Act XLII of 1860. A person, resided at Coimbatore, but had some cultivated land within the local jurisdiction of Ootacamund, to which place he came to answer another demand against him. *Held* that he did not dwell within the jurisdiction of the Ootacamund Small Cause Court. SAMINATHA PILLAI *v.* VARISAI MAHOMED RAVATTAN . . . . 2 Mad., 304

18. ——— *Temporary absence—Dwelling—Act XI of 1865, s. 8.*—Although a defendant may be temporarily absent from his dwelling-house, yet if he retains the same, he will be held to dwell there within the meaning of the Small Cause Court Act (XI of 1865). To dwell in a place is to have one's permanent abode there. MADHO DOSS *v.* SITA RAM . . . . . 3 N. W., 121

19. ——— *Temporary absence from imprisonment—Residence.*—Temporary imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment. GOPAL CHUNDER SIRCAR *v.* KURRODHAR MOOCHEE 7 W. R., 349

20. ——— *Dwelling—Tem-*

Shahjehanpore, and merely visited Meerut for a few days, he was in that case also not dwelling at Meerut, but if, having availed himself of furlough and having retained no permanent place of residence at Shahjehanpore nor having any permanent place of residence elsewhere, he attended the race meeting at

21. ——— *Residence as domestic servant.*—A suit is not maintainable at K

the strict sense of actual residence. PORGASH PARAY *v.* HACHIM . . . . 7 W. R., 417

22. ——— *Act XI of 1865, s. 8—Place of dwelling.*—A servant residing within

23. ——— *Suit against wife*

agent carry on business or work for gain within the local limits of the jurisdiction of the Court. BOWMAN *v.* SHAWE . . . . 10 W. R., 240

24. ——— *Commission agent—Residence—Carrying on business.*—A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot

25. ——— *Act XI of 1865, s. 8—Residence—Zamindari business.*—Zamindari

ANONYMOUS . . . . 23 W. R., 223

26. ——— *Act XI of 1865, s. 9—Suit against Agent of Governor General.*—A

BUCKLE . . . . . 10 W. R., 142

27. ——— *Residence in Cantonment—Practising in Small Cause Court jurisdiction.*—Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the Cantonment Magistrate and the Small Cause

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

[illegible]

[4 Bom., A. C., 10

28. ——————*Dwelling—Act XI of 1865, s. 8*—The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the [illegible] returned to Vellore previous to the hearing of the suit. [illegible] nothing in point of law to prevent the Judge from affirming his jurisdiction. KISHUN SING *v.* STURT [5 Mad., 471

29. ——————*Defendant resid*[illegible]

[6 Bom., A. C., 200

30. —————— *Cause of action—Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4*—When a cause of action had [illegible] Small Cause Court to try the suit. MATHURADAS JAGJIVANDAS *v.* NATHA BAJA 6 Bom., A. C., 131

MOHUR RAM MOODEE *v.* KARBAREE SIRDAR [18 W. R., 312

31. —————— *Suit against* [illegible]

[1 Mad., 103

32. —————— *Madras Civil Courts Act (III of 1873)—Act XI of 1865, s. 8.*—Since the passing of the Madras Civil Courts Act (III of 1873) the general control over all the Civil Courts is vested in the District Judge to whom the application should be made. It is only in cases where the defendant is beyond the local jurisdiction of the District Court, and the Court before whom the suit is instituted has not otherwise jurisdiction under Act XI of 1865, s. 8, that a reference to the High Court is necessary. ANONYMOUS . 8 Mad., Ap., 10

33. —————— *Suit for debt against defendants with joint liability—Act XXIII of 1861, s. 4.*—A suit for debt against two defendants whose liability was joint [illegible] within whose jurisdiction the other defendant was [illegible]

34. —————— *Joint bond—One of parties out of jurisdiction—Act XI of 1865, s. 12.*—In a suit brought on a bond [illegible] High Court was necessary before it was tried, and therefore, under s. 12, Act XI of 1865, the Munsif had no jurisdiction to try the suit. KHODA BAKSH MISTRI *v.* BENI MANDAL [6 B. L. R., 710 note: 14 W. R., 158

35. —————— Account—*Suit by gomashta for excess expenses.*—A suit by a gomashta for excess expenses incurred by him over [illegible] it necessary to investigate the accounts of the mehal PROSUNNO CHUNDER ROY *v.* SREENATH SREEMANEE [7 W. R., 422

36. —————— *Suit to recover* [illegible] GHOSE . . 11 W. R., 63

See GRANT *v.* RAM TONOO BHOOMICK [10 W. R., 83

37. —————— *Act XI of 1865, s. 6—Suit for balance due on account of rents.*—A suit for a balance due on account of rents collected from the plaintiff's [illegible] both parties to determine what is due. DIRBUKEE NUNDUN SEN *v.* MUDHOO MUTTY GOOPTA [I. L. R., 1 Calc., 123: 24 W. R., 478

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

38. ——————— *Suit against guardian and manager of property for rents collected by him—Trustee bound to account* —In a suit to recover, from the guardian of a minor and the manager of his property who had granted to himself, benami, a farming lease of the minor's property, rents collected by him for which he did not account, —*Held* that the defendant could not be considered simply as an agent to collect plaintiff's rents, but was bound as a trustee to account for the proceeds of the property, and that the claim was therefore not cognizable in a Small Cause Court. RAM JOY MOJOOMDAR *v.* KEDAR NARAIN ROY 25 W. R., 75

39. ——————— *Suit by principal against agent—Question of accounts* —A suit by a

ROY *v.* MADHUB CHUNDER CHUCKERBUTTY [21 W. R., 283

40. ——————— Act XL of 1858, s. 3—*Defending suit without certificate* —A Court of Small Causes, constituted under Act XI of 1865, is competent, under s. 3, Act XL of 1858, to allow any relative of a minor to institute or defend a suit in his behalf without a certificate of administration, where it has jurisdiction in relation to the subject matter of the suit. KHANTO BEWAH *v.* NUND RAM NATH [15 W. R., 369

41. ——————— Alternative relief—*Act XI of 1865, s. 6* —In a suit by *A*, asking that *B* might be ordered to fill up an excavation or to pay him R25

42. ——————— Arbitration—*Civil Procedure Code, s. 327* —When a matter had been referred to

ELAM PARAMANICK *v.* SOJAITULLAH [1 B. L. R., A. C., 43 : 10 W. R., 85

BRIDGE *v.* EDALJI MANCHARJI. VITHAL AMBARAM *v.* DAYABHAI MURLIDHAR 10 Bom., 54

GANGAPPA *v.* KAPINAPPA 5 Mad., 128

43. ——————— *Arbitration award—Act XI of 1865, s 6—Liability arising under an award.*—A liability arising under an award is not one of such a nature as to fall within the terms used in the Small Cause Court Act to denote the claims cognizable by such Court. GUNESHEE *v.* CHOTAY LAL 3 N. W., 117

DURJAN SINGH *v.* SIBIA 7 N. W., 329

44. ——————— *Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 24—Civil Procedure Code, ss 525, 526—Suit to recover money under an award—Application to file award.* —A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a subordinate Court on the Small Cause side.

that the suit was cognizable by a Court of Small

[I. L. R., 13 Mad., 344

45. ——————— Army Act—*Army Act (44 & 45 Vict., c 58), s 144—Proviso—Jurisdiction —Suit against a soldier—Execution* —A suit for

whether the defendant is a soldier or not arises only when the plaintiff seeks to execute his decree. KISANDAS BUDHMAL *v.* HALPIN [I. L. R., 10 Bom., 218

46. ——————— *Army Act (44 & 45 Vict., c 58), ss 148 and 151—Courts of Request, their jurisdiction—Court of Small Causes, Power of—Construction of s. 151, cl 1, of the Army Act.*—The Army Act (44 & 45 Vict., c 58) gives jurisdiction to a Court of Small Causes in all actions of debt and personal actions against persons subject to military law (other than soldiers in the regular forces) over which such Court would ordinarily exercise jurisdiction, and provides a Court of

SHERE ALI *v.* PRENDERGAST [I. L. R., 13 Calc., 143

47. ——————— *Army Act of 1881, ss 144, 151—Civil Procedure Code, s 468—Jurisdiction of Small Cause Courts over soldiers* —*A* sued a soldier to recover a debt not amounting to £30. *Held* that the suit was cognizable by a Court of

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

48. [illegible] *immoveable* [illegible] which cannot [illegible] decree cannot [illegible] Cause Court therefore cannot grant an attachment before judgment of immoveable property. MARTHAMMA *v.* KITTU SHERFGARA . 6 Mad., 91

49. ——— Cess—*Suit to recover arrears of cess.*—A suit brought to recover arrears of a cess is not a suit of the nature cognizable by Small Cause Courts KASIM ALI *v.* SHADEE . 3 N. W., 21

50. ——— *Act XI of 1869, s. 6—Suit for zamindari dues and cesses.*—The [illegible] custom whereby a proprietary due of the above amount was recognized and payable to the zamindar of the said land The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zamindari dues or cesses were in the nature of suits cognizable by a Court of Small Causes,—*Held* by the Full Bench that the claim as brought did not fall within any of the classes of suits cognizable by the Courts of Small Causes *aliter* if the due was payable in virtue of a contract. NANKU *v.* BOARD OF REVENUE

[I. L. R., 1 All., 444

51. ——— *Suit to recover road cess—Road Cess Act (Beng. Act X of 1871).*—A suit to recover road-cess and public works cess is not a claim for money on a bond or other contract, but is a claim created and made recoverable by a special enactment of the Legislature, and does not fall within the provisions of s. 6 of the mofussil Small Cause Court Act. DAVID *v.* GRISH CHUNDER GUHA . I. L. R., 9 Calc., 183 : 11 C. L. R., 305

52. ——— *Act XI of 1865—Jurisdiction — Water-cess — Payment by landholder—Implied contract by tenant to recoup.*—If a landholder pays to Government water-cess which his tenant is legally bound to pay, a Small Cause Court, constituted under Act XI of 1865, has jurisdiction to decide a suit brought by the landholder against the tenant to recover the amount so paid by the landholder. VENKATRAMAYA *v.* VIRAYA

[I. L. R., 8 Mad., 4

53. ——— Claim to property seized in execution—*Act XI of 1865, s. 6—Title, Question of.*—A Small Cause Court had no jurisdiction to entertain a suit by a decree-holder to establish his judgment-debtor's title to property seized in execution which had *subsequently been released* to a claimant under s. 246 Act VIII of 1859, and to recover the value of the property from the successful claimant. RAM DHUN BISWAS *v.* KEFAL BISWAS

[1 B. L. R., S. N., 10 : 10 W. R., 141

54. ——— *Suit to establish right to personal property and to recover value of it.*—A suit on the part of an unsuccessful claimant to establish his right to personal property and to recover the value of the same is not cognizable by a Small Cause Court. MOOZDEEN GAZEE *v.* DINOBUNDHOO GOSSAMEE . . . . . 13 W. R., 99

This latter case is not to be taken as extending the rule laid down in *Ram Dhun Biswas* v. *Kefal Biswas, 1 B. L. R., S. N., 10*, in suits by unsuccessful claimants under s. 246, Act VIII of 1859 PUNJU *v.* OODOY . . . . . 18 W. R., 337

See WOOMESH CHUNDER BOSE *v.* MUDDUN MOHUN SIRCAR . . . . . . 2 W. R., 44

and ANONYMOUS . . 2 W. R., S. C. C. Ref., 5

55. ——— *Civil Procedure Code, 1877—Owner to recover moveable property under R500.*—The plaintiff was owner of moveable property attached in execution of a decree, and, his claim to such property having been rejected under s. 246 of Act VIII of 1859, he brought this suit to recover possession. *Held* that the suit was cognizable by a Mofussil Court of Small Causes. *Quære*—Whether the new Civil Procedure Code (Act X of 1877) prevents or allows a suit, like the present, to be brought in a Court of Small Causes. NATHU GANESH *v.* KALIDAS UMED . I. L. R., 2 Bom., 365

56. ——— *Suit to establish* [illegible] tuted in, a Small Cause Court GORDHAN PEMA *v.* KASANDAS BALMUKUNDAS I. L. R., 3 Bom., 179

57. ——— *Attachment of moveable property—Suit to establish right—Civil Procedure Code, s. 283.*—A suit under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish [illegible]

58. ——— *Claim for personal property and to set aside order disallowing objection to its attachment—Jurisdiction—Act XI of 1865, s. 6.*—A suit to recover moveable property attached in execution of a decree and damages for its wrongful attachment, and to set aside the order disallowing an objection to its attachment, is not a suit cognizable in a Court of Small Causes. MUKAND LAL *v.* NASIRUD-DIN . . I. L. R., 4 All., 416

59. ——— *Suit for personal property—Suit to establish right—Civil Procedure Code, s. 283—Act XI of 1865, s. 6.*—A person who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

regarded as a suit "for personal property or for the value of such property" within the meaning of s. 6 of Act XI of 1865, but must be regarded as a suit to establish the plaintiff's right, in the sense of s. 283 of the Civil Procedure Code, inasmuch as the plaintiff could not recover the property without clearing out of his way the order of attachment, which he could only do by establishing his right in the sense of s. 283, and therefore the suit was not one cognizable in a Court of Small Causes *Janakiammal v. Vithenadien, 5 Mad., 191, Kondeme Naine Booche Naidoo v. Ravoo Lutchmeepaty Naidoo, 8 Mad, 35; Gorilhan Pema v. Kasandas Balmukundas, I. L. R., 3 Bom., 179, Chhaganlal Nagardas v. Jeshan Rav Dilsukhram, I. L. R., 4 Bom, 503, Balkrishna v. Kisansingh, I. L. R, 4 Bom., 505 note*, and *Radha Kishen v. Chotey Lall, 3 N. W., 155*, dissented from. GODHA v. NAIK RAM . . I. L. R., 7 All., 152

60. ———— *Suit to recover moveable property wrongly attached—Suit to set aside order of Munsif.*—A suit brought by an owner to recover moveable property of which he has been dispossessed by an attachment order may, when the value of the property is less than R500, be maintained in a Court of Small Causes, it being a suit for

BALMOKUND v. LEKHRAJ . 3 N. W., 156 note

61. ———— *Suit to establish right to personal property seized in execution of decree.*—A suit to establish the plaintiff's right to

[illegible] Mad., 101

62. ———— *Act XI of 1865, s. 6—Suit as to title to property taken in execution.*—A suit brought by a decree-holder to have it decided whether moveable property taken in execution is or is not the property of his judgment-debtor is not a suit cognizable by a Court of Small Causes. JETHABHAI BHAICHAND v. BAI LAKHU [6 Bom., A. C., 27

63. ———— *Personal property—Suit by decree-holder.*—A suit by a decree-holder to establish his right to attach and sell move-

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued*

though the value of the property be such as to fall within its pecuniary limit. CHHAGANLAL NAGARDAS v. JESHAN RAV DALSUKHRAM [I. L. R., 4 Bom., 503

BALKRISHNA v KISANSING [I. L. R, 4 Bom., 505 note

64. ———— *Suit by owner for personal property*—The defendant, who was a farmer of revenue, attached a buffalo for arrears due from a third party. In a suit brought by the plaintiff for a declaration that the defendant was not entitled to attach the buffalo,—*Held* that the suit should be filed in the Court of Small Causes, inasmuch as it was a suit by the owner to recover personal property, and fell within the ruling in *Chhaganlal Nagardas v. Jeshan Rav Dalsukhram, I. L R., 4 Bom, 503.* PAGI PARTAP HAMIR v. VARAJLAL MULCHAND . . I. L. R., 8 Bom, 259

65. ———— *Suit to declare moveable property not liable to attachment—Civil Procedure Code, 1882, s 283.*—Certain moveable property having been attached in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred by *M* and rejected. *M* then brought a suit in the District Munsif's Court for a declaration that the property was his and was not liable to be sold in execution. The suit was dismissed on the ground that it was cognizable by a Court of Small Causes *Held* that *M* was not bound to sue for recovery of the property, and that the suit was not cognizable by a Small Cause Court constituted under Act XI of 1865 MAHOMED KOYA v. KASMI . . I. L. R, 9 Mad, 206

66 ———— *Civil Procedure Code (Act X of 1877), ss 280, 281, and 283—Goods sold under execution*—S 283 of the Civil Procedure

declaration of his right to the property, such a suit will not lie in the Small Cause Court. SHIBOO NARAIN SINGH v. MUDDEN ALLY NATABAR NANDI v. KALIDASS PALI [I. L R., 7 Calc., 608: 9 C. L. R., 8

67. ———— *Suit for value of sheep wrongly attached and sold in execution of decree.*—Where plaintiffs' sheep had been attached in

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

satisfaction of a decree against a third party, and the second defendant had purchased the property at the Court sale,—*Held* that a suit merely to recover the sheep or their value is cognizable by a Small Cause Court. KUNDEME NAINE BOOCHE NAIDOO *v.* RAYOO LUTCHMEEPATY NAIDOO . 8 Mad., 36

68. ——————— *Suit for property wrongly seized in execution—Civil Procedure Code (Act XIV of 1882), ss. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s. 281—Suit by claimant to establish right.*—The

twelve other similar suits and obtained decrees against other persons, who were also described as owners of

to bring a suit under s. 283 No claim or order was made in the case of the other twelve suits. *R M* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those defendants (Nos. 1 and 2) who had been plaintiffs in suit No. 1518 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie

to try the suit. In substance the suit was a suit for goods, though, as a matter of form, the decree might

Causes had jurisdiction The plaintiff was entitled to abandon part of his claim. RAGHUNATH MUKUND *v.* SAKESH KAMA . I. L. R., 23 Bom., 266

69. ——— Compensation for acquisi-

ss. 470 and 622—Jurisdiction of Munsif—Superintendence of High Court.—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at R468 A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code. *Held* that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the

70. ——— Contract—*Suit for breach of contract on failure to register.*—A suit to recover money paid as the price of land in consequence of

DOORGAMONEE . 9 W. R., 498

71. ——————— *Suit for value of produce not paid under contract.*—Where a cultivator is a mere servant of the landlord, a suit for damages will lie against him in the Small Cause Court. If the cultivator is a tenant to whom the landlord has sub-let the land, a suit for non-fulfilment of his contract by the tenant will not lie in the Small Cause Court, but in the Revenue Courts under Act X of 1859. SREENATH DUTT *v.* DWARY DHALLIE . . . 2 W. R., S. C. C. Ref., 2

72. *Suit for payment in kind.*—A suit to recover a quantity of rice (or its value R300) in return for some paddy which had

73. *Hindu son's liability for family debt.*—The manager of a Hindu family, having borrowed money for a proper and necessary purpose,—his son's marriage,—gave a bond to secure the debt. *Held* that a suit against the father and son to recover the money lent was cognizable by a Court of Small Causes under Act XI of 1865. PUNA KARUPPANA PILLAI *v.* VIRABADRA PILLAI . . . I. L. R., 6 Mad., 277

74. *Suit against sons in undivided family to enforce debt incurred by father.*—A suit against the undivided sons of a

75. *Civil Procedure Code, s. 556—Mofussil Small Cause Courts Act (XI of 1865), s. 6—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father.*—In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt. *Held* by the Full Bench that the suit as against the sons was not a suit of the nature cognizable in a Court of Small Causes within the meaning of s. 586 of the Code of Civil Procedure. *Held* further by the Divisional Bench that the decree against the sons was bad. NARASING *v.* SUBBA [I. L. R., 12 Mad., 139

76. ——— *Share of trees cut by tenants—Second appeal.*—A suit by a zamindar for one-fourth of the price of trees cut by tenants is, when based upon contract, one of the nature cognizable in a Court of Small Causes, and consequently, where the amount claimed is under five hundred rupees, no second appeal lies in such a suit. The principle laid down in *Nanku v. Board of Revenue, I. L. R., 1 All. 444,* followed. HARI SINGH *v.* FALDEO SINGH . I. L. R., 2 All., 905

77. ——— *Suit for share of produce of trees—Landlord and tenant—Wajib-ul-urz—Jurisdiction of Revenue Court—Second appeal.*—A suit by a landholder against a tenant for R130, being the value of a moiety of the produce of a grove of mango trees held by such tenant, such amount being claimed in virtue of an agreement recorded in the wajib-ul urz, and not in virtue of any

[I. L. R., 3 All., 37

78. ——— *Act X of 1859, s. 10—Suit for share of value of crops.*—The plain-

not one for a sum exacted in excess of rent within the meaning of s. 10 of Act X of 1859, and consequently the suit would lie in the Small Cause Court. GARIBULLA PARAMANICK *v.* FAKIR MAHOMED KOLU [1 B. L. R., S. N., 13: 10 W. R., 203

79. ——— *Suit on contract.*

suit on a contract, and was cognizable by the Small Cause Court. NOBIN CHUNDER VODRO *v.* KEDAR NATH CHUCKERBUTTY . . 16 W. R., 228

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

80. ——— *Suit against co-contractor—Suit for money due on a contract.*—Plaintiff, defendant, and another party had jointly and separately contracted with Government to do

[15 W. R., 513

81. ——— *Act XI of 1865, s. 6—Contract, Suit on.*—The word "contract" in

[illegible]

82. ——— *Suit to recover share in varshasan—Claim on implied contract*—

of the plaintiff. *Sunkur Lall Pattuck Gyawal v. Ram Kalee Dhamin, 18 W. R., 104,* followed. *Keshav Bhat v. Bhagirthi Bai, 3 Bom., A. C., 75,* overruled. RATAN SHANKAR REVASHANKAR *v.* GULAB SHANKAR LALSHANKAR . . . 10 Bom., 21

See BHIMRAV JIVAJI *v.* BHIMRAV GOVIND [11 Bom., 194

83. ——— *Suit to recover share of annual allowance.*—A suit to recover a share of arrears of a varshasan or annual allowance paid

84. ——— *Act XI of 1865, s. 6—Suit to recover arrears of annuity from endowed property.*—In a suit by a widow of one

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

of the family from another descendant who had received the whole stipend.—*Held* that this was not a suit for money due on a contract or "for personal [illegible]

[illegible]

85. ——— *Act XI of 1865,* [illegible]

own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal pre- [illegible]

[illegible]

86. ——— *Act XI of 1865, s. 6—Suit for money on implied contract.*—Plaintiff took a lease from defendant, and a bakijai setting forth a certain sum (R473-10) as due from the tenants on account of rent, and on the faith of the bakijai paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued defendant for a refund. *Held* that the claim was for money due under an implied contract for the repayment of a sum under R500, and cognizable by a Small Cause Court under Act XI of 1865, s. 6, cl. 4. WUZEER MULLICK SIRCAR *v.* NITUMBINEE DEBEE

[18 W. R., 484

87. ——— *Implied contract —Contract to indemnify against claim of superior landlord.*—If *A* buys a tenure at a public auction [illegible]

[illegible]

88. ——— *Second appeal—Relation resembling contract—Contract Act, s. 70* [illegible]

[illegible]

ded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of *B*, who was one of the heirs, was recorded as proprietor. In a suit by *N* against *B* to recover R70, being the amount he had paid on account of revenue in respect of such share for the period between January 1874 and February 1878,—*Held* that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie. NATH PRASAD *v.* BAIJ NATH . I. L. R., 3 All., 66

89. ——— *Payment of revenue by a person for another—Suit for reimbursement.*—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, [illegible]

[illegible]

ABUL HASAN . . I. L. R., 4 All., 134

90. ——— *Relations resembling contract—Act IX of 1872 (Contract Act), ss. 69, 70—Payment of land revenue—Act XI of 1865, s. 6.*—The plaintiffs purchased land belonging to the defendant at an execution-sale, at which it was noti- [illegible]

[illegible]

They then sued the defendant in the Munsif's Court to recover the amount they had paid. *Held* that, with reference to the principle laid down in *Nath Prasad v Baij Nath, I. L. R., 3 All., 66,* the suit should have been instituted in the Court of Small Causes. IN THE MATTER OF THE PETITION OF ALI MAZHAR . . . . I. L. R., 4 All., 152

91. ——— *Contract Act (IX of 1872), ss 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.*—The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover [illegible]

[illegible]

plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to be independent [illegible]

[illegible] cogni- [illegible] of Act [illegible] *L. R., 3 All., 66,* approved. KRISHNO KAMINI CHOWDHRANI *v.* GOPI MOHUN GHOSE HAZRA

[I. L. R., 15 Calc., 653

92. ——— *Provincial Small Cause Courts Act, sch. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property—Suit relating to contract—Contract Act, s. 69.*—Lands of which part belonged to the plaintiffs and

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

part to the defendant were comprised in a pottah which ran in the names of the plaintiffs and another. The defendant's share of the assessment fell into arrear and was collected from the plaintiffs who now sued to recover R200, being the amount so paid together with interest *Held* the suit was of a nature cognizable by a Court of Small Causes, and therefore [illegible]

93. ——— Contribution—*Suit for contribution.*—A Small Cause Court has no jurisdiction to try a suit for contribution. TAMIZUDDIN MIRDHA *v.* GAFFUR KHAN . 7 B. L. R., Ap, 40

94. —— — — *Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 41*—Cl. 41, sch. II of the Provincial Small Cause Courts Act (IX of 1887), excludes a suit for contribution from the jurisdiction of the Small Cause Court, and restores the law laid down in *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry, B L. R., Sup. Vol., 675* · *7 W. R., 377* BHATOO SINGH *v* RAMOO MAHTON . . . I. L. R., 23 Calc., 189

95 ——— *Suit for contribution where there is no contract.*—A suit for contribution, where there is no contract, express or implied, cannot be entertained by a Small Cause Court. SREEPUTTY ROY *v.* LOHARAM ROY

[B. L. R., Sup. Vol., 687 : 7 W. R., 384

ITCHA MOYEE DOSSEE *v.* BAMA SOONDUREE DOSSEE . . . . 25 W. R., 73

96. ——— *Suit against co-sharer for money recovered on joint decree*—A suit against a co-sharer for a sum of money recovered by the plaintiff upon a decree which was joint property may be brought in a Small Cause Court. HURO MOHUN ROY *v.* KHETTRO MONEE DOSSEE

[12 W. R., 372

97. ——— *Suit for contribution under joint decree—Act XI of 1865, s 6*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution The meaning of the word "contract" in s. 6, Act XI of 1865, considered. GOVINDA MONEYA TIRUVAN *v.* BAPU

[5 Mad, 200

98 ——— *Decree against several defendants jointly—Second appeal.*—A suit for contribution not founded upon contract, but in respect of money for which the plaintiff and the defendants in the contribution suit had been by a former decree made jointly liable, is not within the cognizance of a Court of Small Causes, which cannot deal with questions of equity. A second appeal will therefore lie in such a suit. *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry, B. L R., Sup. Vol., 675,* followed. *Nath Prasad v. Baij Nath, I. L. R., 3 All., 66,* distinguished. FUTTEH ALI *v.* GUNGANATH ROY

[I. L. R., 8 Calc., 113 : 10 C. L. R., 20

99 ——— *Money paid in satisfaction of joint decree.*—A suit for contribution for money paid by one judgment-debtor in satisfaction of a joint decree against him and others cannot be entertained by a Court of Small Causes. *Rambux Chi*[illegible]
B L. [illegible]
Majee [illegible]
followe[illegible]
66, dissented from. RAMJOY SURMA *v* JOYNATH SURMA I. L R., 9 Calc, 395 : 12 C. L. R, 314

100. ——— *Suit to recover a share of money recovered by co-plaintiff under a decree—Act XI of 1865 (Mofussil Small Cause Courts Act), s. 6*—*Held* that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree was a claim for money due on a contract within the meaning of s 6 of the Mofussil Small Cause Courts Act (XI of 1865), and was therefore a suit of the nature cognizable by a Court of Small Causes in which, under s 586 of the Civil Procedure Code, no second appeal could lie. DEBI DAS *v* LACHMAN SINGH I. L. R., 7 All., 896

101. *Hindu law*— [illegible]

cumstances of the case. CHELLAPILLA RAU PANTULU *v* BALARAMAKRISHNAMA PANTULU

[I. L. R., 6 Mad., 424

102. ——— *Agency—Recovery on joint decree*—Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment debtor his own share and plaintiff's share on her behalf The latter brought the present suit to recover the same from defendant, whose plea was that the amount had been paid to the plaintiff. *Held* that, if defendant acted as agent of the plaintiff, there was a contract implied between them that the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court *Held* that, as the Subordinate Judge before whom the case came in appeal was also Small Cause Court Judge, he might have dealt with the case without referring the above point for the decision of the High Court. SHUMBHOONATH MOZOOMDAR *v* KASHEESSUREE DEBEE . . . . . 13 W. R., 100

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

103. ——— *Suit against co-sharer for contribution in respect of Government revenue.*—A suit by a co-sharer for contribution in respect of Government revenue paid by him in excess of his quota is not cognizable by a Small Cause Court, as the extent of the share in respect of which contribution is sought cannot be determined without deciding a question of title. KALEE NATH ROY *v.* NILA RAM PURAMANICK . 7 W. R., 32

104. ——— *Suit for contribution in respect of money paid as revenue to save estate from sale.*—A claim for money below R500 paid as revenue by one partner in an estate on account of another in order to save the estate from sale is due under an implied contract between them, and is therefore cognizable by a Small Cause Court. RAM MONEY DOSSIA *v.* PEARY MOHUN MOZOOMDAR [6 W. R., 325

105. ——— *Suit to recover arrears of revenue compulsorily paid*—A suit to recover arrears of revenue which the plaintiff was compelled to pay by the revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes PARASURAMA CHEDUMBRAIYAN *v.* KRISTNAIYAN 5 Mad., 462

106. ——— *Suit by co-sharer for contribution to Government revenue*—A suit by a co-sharer for contribution in respect of arrears of revenue paid by him in excess of his quota to save the entire estate from sale is not cognizable by a Small Cause Court BROMMOROOP GOSWAMEE *v.* PRANNATH CHOWDRY . 7 W. R., 17

107. ——— *Suit for contribution by co-sharer who has paid whole Government revenue.*—Where one of several co-sharers in an estate paying revenue to Government has paid the revenue due upon the whole estate to prevent it from being sold, a Small Cause Court has no jurisdiction to entertain a suit brought by him against the other co-sharers for contribution. RAMDUX CHITTANGEO *v.* MODHOOSOODUN PAUL CHOWDHRY

[B. L. R., Sup. Vol., 675
2 Ind. Jur., N. S., 155: 7 W. R., 377

MODHOOSOODUN MOZOOMDAR *v.* BINDOBASHINY POSSEE . . . 6 W. R., Civ. Ref., 15

108 ——— *Suit for contribution—Co-sharers.*—No suit for contribution between co-parceners in a revenue-paying estate, or for contribution between co-parceners in a jumma, will lie in the Small Cause Court. NOLIN KRISHNA CHAKRAVATI *v.* RAM KUMAR CHAKRAVATI. BUNNIJAN BIBI *v.* MAHAMMAD HOSSAIN

[I. L. R., 7 Calc., 605: 9 C. L. R., 90

109. ——— *Suit for share of revenue paid by mortgagee*—A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay when in occupation of the mortgaged property, is an obligation in equity to repay, and is not cognizable by a Court of Small Causes. VITHOBA BIN KESHAVSHET *v.* SHABAJIRAV [5 Bom., A. C., 122

110. ——— *Suit to recover money paid to co-sharers as excess of rent*—A suit to recover money alleged to have been ...

CHUCKERBUTTY *v.* BHYRUBNATH PALFET [15 W. R., 52

111. ——— *Suit cognizable by Revenue Court—Suit to recover money paid to prevent sale for arrears of rent.*—The plaintiff sued to recover money paid in order to prevent his land from being sold at the instance of the defendant for non-payment of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. *Held* that the Small Cause Court had no jurisdiction, because the suit was cognizable before a revenue officer. SHAUNKARA SUBBIEN *v.* VELLAYAN CHETTY 5 Mad., 179

112. ——— *Suit by surety* ...

not cognizable by a Small Cause Court, unless there is a contract, express or implied, between the parties. SHADOO MAJEE *v.* NOORAI MOLLAH. JOSEPH *v.* NADOO BHAGUT CHUNDER DUTT *v.* DENGAR GOPE [B. L. R., Sup. Vol., 691: 7 W. R., 386

113. ——— *Suit by one surety against another for contribution—Act XI of 1865, s. 6.*—A suit by one surety against another ...

5 Mad., 200, and *Ratan Shankar v. Gulabshankar, 10 Bom., 21*, followed. HARI TRIMBAK *v.* ABASAHEB [I. L. R., 4 Bom., 321

114. ——— *Provincial Small Cause Court Act (IX of 1887), sch. II, arts. 2, 41, 42, and 44—Suit for costs paid by one of two persons jointly liable*—*N C* granted a lease of three plots of land to *B S*. The heirs of the former lessee brought a suit against *N C* and *B S* ...

[I. L. R., 20 Calc., 486

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

115. ——————— *Suit for share of costs of repairs of channel—Provincial Small Cause Courts Act* [illegible]

[illegible]

116. ——— Copyright—*Jurisdiction of Presidency Small Cause Courts—Copyright Acts (XX of 1847 and XII of 1876), s 1—District Courts.*—As the class of cases provided for by s 7 [illegible]

[illegible] so by analogy the jurisdiction in the same class of cases arising in the mofussil was transferred to the jurisdiction of the mofussil Courts of Small Causes by Act XLII of 1860 and Act XI of 1865 But sch. I of Act XII of 1876, amending Act XX of 1847, has now re-transferred the jurisdiction in such suits to the District Courts. IN THE MATTER OF THE PETITION OF HAMEEDOOLLAH. HAMEEDOOLLAH v. MAHOMED ASGHUR HOSSEIN

[I. L. R., 6 Calc; 499 : 7 C. L. R., 471

117. ——— Costs—*Suit for costs incurred in suit to compel registration of document.*—An action lies in a Small Cause Court for recovery of costs incurred by the plaintiff in a suit to compel registration of a document. CHENGUIYA RAYA MUDALI v THANGATCHI AMMAL . 6 Mad., 192

118. ——— Crops—*Standing crops—Immoveable property—Suit for enforcement of lien—Provincial Small Cause Courts Act, sch. II, art 6*—Standing crops are immoveable property in the sense of the General Clauses Consolidation Act (I of 1868), and of sch II, cl 6, of the Provincial Small Cause Courts Act A Small Cause Court therefore is not competent to try a suit for enforcement of a lien in respect of standing crops CHEDA LAL v. MULCHAND MINDAI v. KUNDAN SINGH

[I. L. R., 14 All., 30

119. ——————— *Act XI of 1865, s. 6—Suit to establish right to crops on basis of* [illegible]

[illegible] Court nature *Godha v Naik Ram, I L. R., 7 All., 152,* and *Shiboo Narain Singh v Madden Ally, I L. R., 7 Calc , 608,* relied on DAKHYANI DEBYA v. DOLEGOBIND CHOWDHRY

[I. L. R , 21 Calc , 430

120. ——— Customary payments—*Proprietary due, Suit for.*—A suit for russum (a proprietary due) not claimed as rent nor under a contract, but by custom, payable by cultivators in occupation of the land either as proprietors or raiyats, is not of a nature triable by a Small Cause Court EBRAHIM SAIB v. NAGASAMI GURUKAL

[I. L. R., 3 Mad., 9

121. ——————— *Suit for inamdar for proprietary dues.*—Suits for proprietary dues, to which the inamdar, as the owner of the village, lays claim, are not cognizable by a Court of Small Causes. They are not paid as rent, nor are they claimed under any contract SUBRAMANIAN CHETTI v PRINCE OF ARCOT

[I. L. R., 2 Mad., 146

122. ——————— *Suit for share of jujman's collections.*—A suit for a share of the collections made from "jujmans" in return for spiritual instruction is not of the nature cognizable by a Court of Small Causes under Act XI of 1865. CHOONEE LALL v GOUREE SHUNKUR 1 Agra, 84

123. ——— Damages—*Act XI of 1865, s 6—Suit for damages for personal injury.*—By s. 6 of Act XI of 1865, suits to recover damages for personal injury cannot be brought in a Mofussil Small Cause Court, unless actual pecuniary damage has resulted from the injury. That section excludes from the jurisdiction of the Mofussil Small Cause Courts suits for defamation, infringement of right, and the like, where no actual pecuniary damage has been sustained by the plaintiff, and where the measure of damages to be awarded is often a question [illegible]

DURGA PERSHAD v ASA JOLAHA

[I. L. R , 5 Calc , 925 : 6 C. L. R., 487

124. ——————— *Suit for damages—Loss of reputation.*—Where actual pecuniary damages have resulted from personal injury, the suit [illegible]

MANSING LALUNG v THERAM DOLOYE

[22 W. R., 395

125. ——————— *Suit for damages for malicious prosecution*—A suit properly alleging a malicious prosecution and special pecuniary loss resulting therefrom is cognizable in a Small Cause Court SITARAMAN v SUBA PILLAI

[2 Mad., 254

126. ——————— *Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 35 (c)—Suit to recover costs of a criminal prosecution*—Costs incurred in defending a criminal prosecution are recoverable only by a suit for damages for malicious prosecution Such a suit is one for "compensation" within the meaning of cl 35 of sch II of the Provincial Small Cause Courts Act (IX of 1887), and is excluded from the jurisdiction

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

of a Small Cause Court. MAHOMED ALI *v.* BAYAMA [I. L. R., 14 Bom., 100

127. ——— *Suit for damages for personal injury—Actual pecuniary damage.* ... laid at R200, ... xpenses caused ... the defendants, ... secution which ... and R100 for injury to his reputation and feelings. *Held* that, inasmuch as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference ...

v. BHOLA . . . I. L. R., 10 All., 40

128. ——— *Compensation* ...

129. ——— *Act XI of 1865, s. 6—Suit for damage to crops.*—The term "damages" in s. 6 of Act XI of 1865 includes damages to crops, and a suit to recover damages for the wrongful reaping and carrying off the produce of certain fields is cognizable by a Court of Small Causes. DAUR SINHA *v.* RUGHUNUNDUN SINHA [3 N. W., 101

130. ——— *Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.*—A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was held to be a suit not for rent but for damages. KAROO KAHAR *v.* NATBOO SINGH . . . 24 W. R., 380

131. ——— *Provincial Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and carrying away of grass.*—Act IX of 1887 does not exclude from the jurisdiction of the Small Cause Court a suit for damages for the forcible cutting and carrying away of grass. *Sungram Singh* v. *Juggun Singh, 2 N. W. H. C., 18; Daur Sinha* v. *Rughnundun Sinha, 3 N. W. H. C., 101; Darma Ayyan* v. *Rajapa Ayyan, I. L. R., 2 Mad., 181;* and *Manappa Mudali* v. *McCarthy I. L. R., 3 Mad., 192,* referred to KRISHNA PROSAD NAG *v.* MAIZUDDIN BISWAS . . I. L. R., 17 Calc., 707

132. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 31—Suit for profits of land.*—A suit to recover with interest from the date of suit R500, the value ...

Court under that Act. ANNAMALAI *v.* SUBRAMANYAN [I. L. R., 15 Mad., 298

133. ——— *Suit for damages for value of timber washed up and taken away by Government.*—Where a landowner sued for damages for the value of timber carried away by Government after being washed on to his estate and to ...

134. ——— *Suit to recover value of fishing nets.*—The plaintiffs sued the defendants in the Small Cause Court ...

Court had jurisdiction to entertain the suit. MADUTHAN *v.* SUBBIER . . . 6 Mad., 34

135. ——— *Suit for damages for illegal attachment—Civil Procedure Code, 1859, ss. 81 and 88.*—Certain moveable properties, fishing nets, etc., having been attached under Act VIII of 1859, s. 81, the suit was eventually dismissed and costs awarded to the defendants, who ...

nizable in the Small Cause Court, and the Judge was at liberty to take into consideration both elements of damage. Such a suit would only be barred when compensation had been awarded under s. 88 of the Civil Procedure Code. GOURADHUN MAJHEE *v.* BANEE CHUNDER DOSS . . 21 W. R., 375

136. ——— *Provincial Small Cause Courts Act (IX of 1887), s. 35—Suit for compensation for illegal attachment—Suit to recover*

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

money paid in excess —The plaintiff sued to recover

137. ——— *Suit for damages for breaking wall* —In a suit for damages for breaking down and removing bricks from a wall, where defendant's plea was *bonâ fide* purchase for value from plaintiff's predecessor, and plaintiff replied that the sale was invalid, as one made by a Hindu widow without legal necessity,—*Held* that the suit was cognizable by a Court of Small Causes SHUMBHOO CHUNDER MULLICK *v* PRAN KRISTO MULLICK [13 W. R., 105

138. ——— *Suit for damages for obstruction of watercourse—Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 35 (i)—"Diversion," Meaning of*—If by obstruction the flow of water is diverted from a plaintiff's lands, such obstruction amounts to "diversion" within the meaning of cl. 35 (i) of sch. II of Act IX of 1887, and a suit for damages for such obstruction will not lie in the Small Cause Court. PERIAKARUPPAN *v.* PALANIVANDI [I. L. R., 18 Mad., 28

139. ——— *Suit for damages for injury caused by diversion of watercourse —Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 35 (i).*—A suit to recover

[I. L. R, 20 Bom., 283

140. ——— *Suit for damages for omission to certify payments to the Court* —*Held* that a suit will lie in the Small Cause Court for damages sustained in consequence of decree-holder fraudulently omitting to certify to the Court the payments made by plaintiff in satisfaction of a decree out of Court, when there was a contract made that he should so certify them BHUGOBAN TANTEE *v.* GOBIND CHUNDER ROY . 9 W. R, 210

But unless there is actual damage, the suit should be dismissed. MOHIM MUNDUL *v.* KALA CHAND NAEK . . . . 13 W. R., 147

141. ——— *Suit to recover money paid to save estate from sale* —A suit to re-

142. ——— *Suit to recover money paid for defendant—Act XI of 1865, s. 6.*—A suit to recover money which plaintiff has paid for defendant is in the nature of a suit for damages, as described in s. 6 of the Small Cause Court Act. GOPAL SURNOKAR *v* GOYARAM SIRCAR [13 W. R., 273

143. ——— *Act XI of 1865, s 6—Suit for damages.*—A suit to recover the price of the skin and flesh of an ox, brought by a Mahar

TATIA VALAD VITHOBA . . 8 Bom., A. C., 23

144 ——— *Civil Procedure Code (1882), s. 586—Suit for money paid and damages incurred by distraint of crops*—

145. ——— *Code of Civil Procedure (1882), s. 586—Suit for compensation for use and occupation of land valued at less than R500—Provincial Small Cause Courts*

See MAKHAN LALL DUTTA *v* GORIBULLAH SARDAR . . . I. L. R., 17 Calc., 541

SADA SHANKAR *v* BRIJ MOHAN DAS [I. L. R., 20 All., 480

VIRA PILLAI *v* RANGASAMI PILLAI [I L. R., 22 Mad , 149

146. ——— *Suit for damages —Act XI of 1865, s. 6.*—An action to recover from the hands of defendants money collected from a

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

[illegible] with the pay- [illegible] which the [illegible] held to be a [illegible] meaning of Act XI of 1865, s. 6. BHUGOBUTTY CHURN RAJPAYE *v.* SHARODA PERSHAD SOOKUL [23 W. R., 298

147. ———— *Suit to recover as damages profits from service lands—Mad. Reg. VI of 1831, s. 3.*—A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service inam lands by reason of s. 3 of Reg. VI of 1831. TOPPIA PILLAY *v.* PEDDOO PILLAY . . . . 5 Mad., 383

148. ———— *Suit by representative for share of debt due to deceased—Withdrawal of money on deposit by other representatives—Wrongful act.*—The legal representatives having allotted the estate of the deceased in certain [illegible] amount, and was therefore cognizable by a Small Cause Court. KUMRUNNESSA *v.* SUJAN [10 C. L. R., 31

149. ———— *Suit for dam-* [illegible] plaintiff, and upon a fraudulent misrepresentation by defendant that he was conducting plaintiff's case when in fact he was acting for the opposite party, was held to be substantially a suit to recover damages for the injury sustained by plaintiff by reason of the fraudulent concealment and misrepresentation, and to be cognizable by a Small Cause Court. FATIMA BEGUM *v.* MOOSA . . . 18 W. R., 128

150. ———— *Suit for damages for withholding receipt for rent.*—A suit for damages for withholding a receipt for rent is not cognizable by a Court of Small Causes, and therefore was held not to come under the purview of Act XXIII of 1861, s. 27. SHOBLENDRO GEER SUNNYASEE *v.* PATOO DOSS BUSANEA . . . 23 W. R., 304

151. ———— *Suit for recovery of money paid to, but misapplied by, ijaradar.*—A suit for the recovery of money alleged to have been paid by the plaintiff to an ijaradar on account of arrears of rent, when the same has not been applied to the purpose for which it was given, or when a receipt for it is withheld from the plaintiff, is not cognizable by a Small Cause Court, but by a Munsif under s. 11, Bengal Act VIII of 1869. BROJONATH DEY *v.* SHUMBOO CHUNDER CHATTERJEE [18 W. R., 25

152. ———— *Act XI of 1865, s. 6—Suit for overpayment by mistake—Contract Act, s. 72.*—A suit under s. 72 of the Contract Act to recover from a creditor the amount of an overpayment made to him by mistake is a suit for damages within the meaning of Act XI of 1865, s. 6, and is accordingly cognizable by a Mofussil Court of Small Causes. BADRUNNISSA *v.* MUHAMMAD JAN [I. L. R., 2 All., 671

153. ———— Declaratory decree—*Suit to determine co-parcener's rights in moveable property.*—A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining whether a person who has been made a co-plaintiff and claims as a co-parcener of the original plaintiff has any right to the property sued for. The decree in such a case, if given in favour of the plaintiffs, must order that the parties do recover possession of the property sued for in such shares as the Judge may consider them to be entitled. A declaratory decree of the relative rights of the parties cannot be made. AKBAR ALI *v.* JEZUDDIN . I. L. R., 8 Calc., 399

154. ———— *Suit for declaration of right to bring property to sale as liable to attachment.*—A suit in which the plaintiff sues [illegible]

[3 N. W., 208: Agra, F. B., Ed. 1874, 254

155. ———— *Suit for declaration of right and for consequential relief.*—A suit in which the plaintiff prays the Court to consider and declare his right as heir, and for consequential relief, is not within the cognizance of a Small Cause Court. KOLA AHEER *v.* SAJNA AHIMER [3 N. W., 105

156. ———— *Act XI of 1865, s. 6—Declaration that bond is satisfied—Claim for money on bond.*—A claim for money on a bond as specified in Act XI of 1865, s. 6, does not include a [illegible]

157. ———— *Suit for declaration of right to moveable property wrongfully taken.*—Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865), and if the property is moveable and of less than

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

by the defendants from possession and common use of the vessels and sought for a declaration that the

The proceedings of the lower Courts were pronounced null, and the plaint directed to be returned for presentation in the proper Court KALIAN DAYAL v. KALIAN NABER . . I. L. R., 9 Bom., 259

158 ——————— A suit for a declaration of right by a person against whom an order has been passed under s 280 of the Civil

2 *W R*, *44*, discussed and explained. SHIBOO NARAIN SINGH v MUDDEN ALLY. NATABAR NANDI v. KALIDASS PALI

[I. L. R., 7 Calc, 608: 9 C. L. R., 8

159. ——— Decree—*Suits to recover certain decrees, and claim to execute them.*—In addition to a claim to recover certain decrees, amounting together in value to less than R500, the plaintiffs

160. ——————— *Suit on decree of Civil Court*—A suit cannot be maintained in a Small Cause Court in the mofussil to enforce the decree of a Civil Court. MANOHHARAM KALLIANDAS v. BAKSHE SAHEB MIR MAINUDIN KHAN

[6 Bom., A. C., 231

161. ——————— *Suit for balance*

162. ——————— *Suit for instalment of decree under Act X with stipulation for execution of decree in default*—Where a defendant

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued.*

recover the amount of the second instalment AGHORE CHUNDER MOOKERJEE v. WOOMASOONDEREE DEBEA [7 W. R., 216

tained in a Court of Small Causes. BAMA SOONDUREE DEBEE v. KAMINEE BEWA . 10 W. R., 352

164. ——— Deed—*Suit for re-formation of a deed.*—A Small Cause Court has no jurisdiction to entertain a suit for the re-formation of a deed. GULABHAI MONDAS v. DAYABHAI GOVARDHANDAS

[10 Bom., 51

165. ——————— *Suit as to vali-*

See ROGHOORAM BISWAS v. RAMCHUNDER DOBEY [W. R, F. B., 127: B. L. R., Sup. Vol., 34

and HUREE PERSAD MALEE v. KOONJO BEHARY SHAHA . . . Marsh., 99: 1 Hay, 238

166. ——— Dower—*Suit for dower under kabinnamah*—A suit for the maujjil or exigible portion of dower due to plaintiff under a kabinnamah is cognizable by a Small Cause Court, under s. 6, Act XI of 1865, notwithstanding that questions of very considerable difficulty may be raised in it collaterally with regard to the validity of the

167. ——————— *Suit for deferred dower—Act XI of 1865, s. 6*—A suit for deferred dower or muwajjal, payable to the wife by the husband upon her divorce, or upon the husband's death by his heirs out of his estate, is cognizable by a Small Cause Court. HAYATUNNISSA BIBEE v. ASIROODDEEN . . . 18 W. R., 304

168. ——————— *Suit for pro-*

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

169. ———— Endowment—*Suit by Mahomedan for share of property under terms of certain endowment—Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 18.*—A suit by a Mahomedan to obtain a share in property distributable under the terms of a certain endowment is a suit

[I. L. R., 14 All., 413

170. ———— Foreign judgment—*Jurisdiction—Suit on foreign judgment*—A suit upon a foreign judgment is not cognizable by a Court of Small Causes established under Act XI of 1865. ANAKATTIL NARAYANA KRISHNAN KARTHAVU *v.* KOCHERI PILO PILO . I. L. R., 6 Mad., 191

171. ———— *Suit on foreign judgment—Judgment of Court of Native State.*—No suit is maintainable in a Small Cause Court in British India founded upon the judgment of a Court situate in a Native State. BHAVANISHANKAR SHEVAKRAM *v.* PURSADRI KALIDAS

[I. L. R., 6 Bom., 292

172. ———— Government—*Suit to which Government officials are parties—Act XI of 1865, ss 1, 6, and 9—Local Government*—A suit, within

Lieutenant-Governors of Presidencies or Commissioners of Provinces. DESAIJI MANAJI *v.* HEMADALLI IMAM HAIDARBAKSHA 10 Bom., 308

173. ———— *Suit for compen-*

Court for compensation for damages done to an

SECRETARY OF STATE FOR INDIA

[I. L. R., 17 Calc., 290

174. ———— *Provincial Small Cause Courts Act (IX of 1887), sch II, art. 3—Karnam in a zamindari—Officer of Government—Public servant.*—The plaintiffs, being the lessees of a settled zamindari, brought a suit in a Small Cause Court against a karnam in the zamindari to recover damages sustained by reason of the defendant's default in keeping certain accounts, etc. *Held* that the karnam was not an officer of Government, and that the suit was maintainable under the Provincial Small Cause Courts Act. ORR *v.* NEELAMEGAM PILLAI . . . I. L. R., 18 Mad., 395

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

175. ———— Immoveable property—*Provincial Small Cause Courts Act (IX of 1887), sch II, arts. 4 and 13—Hereditary allowance—Bombay General Clauses Act (Bom. Act III of 1886).*—Plaintiffs sued in the Court of Small Causes

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were for maintenance of plaintiff's mother and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that being for a hereditary allowance it was a claim for

property or recovery of an interest in such property within the meaning of art. 4, nor did it come within the purview of art. 13 of sch. II of the Act The Small Cause Court had therefore jurisdiction to entertain the suit VISHNU GANESH JOSHI *v.* YESHAVANTRAO . . . I. L. R, 21 Bom., 387

176. ———— Intestacy—*Suit for money as share under an intestacy.*—The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. GRISH CHUNDER SINGH *v.* AUNA DOSSEE . 17 W. R., 46

NOBIN CHUNDER GOSSAMEE *v.* DRIBO MOYEE DEBEE . . . . . 17 W. R., 520

177. ———— *Suit for possession of personal property as heir under former decree.*—A suit for possession of personal property to which the plaintiff has been, by a decree in a former

KOILASH NATH MONDUL . 7 C. L. R, 71

178. ———— Maintenance—*Suit for arrears of maintenance—Right to maintenance.*—A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it. BHUGWAN CHUNDER BOSE *v.* BINDOOBASHINEE DOSSEE . . 6 W. R., 286

179. ———— *Suit for arrears of maintenance*—*Held* that a suit by a widow for arrears of maintenance fixed by a Munsif's decree, where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Munsif's Court for release from his liability, was

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

not cognizable by the Small Cause Court. KAMINEE DOSSEE *v.* BISHONATH SHAHA . 9 W. R., 214

HEMA KOOERER *v.* AJOODHYA PERSHAD [24 W. R., 474

180. ——— *Maintenance, Suit for arrears of—Fixed maintenance—Small Cause Courts (Provincial) Act (IX of 1887), sch. II, cl. 38.*—A suit for arrears of fixed maintenance

...MOYE DASIA *v.* BHOGIRUTH CHUNDRA [I. L. R., 15 Calc., 164

181. ——— *Provincial Small Cause Courts Act (IX of 1887), cl. 38, sch II—Suit for arrears of maintenance due under a bond or agreement.*—A suit for arrears of maintenance due under a bond or agreement is not cognizable by a Provincial Court of Small Causes under cl. 38 of sch II of Act IX of 1887. BHAGVANTRAO *v.* GANPATRAO . . . I. L. R., 16 Bom., 267

182. ——— *Suit for arrears of maintenance—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 38.*—A suit for arrears of maintenance payable under a written agreement does not lie in a Provincial Small Cause Court. SAMINATHA AYYAN *v.* MANGALATHAMMAL [I. L. R., 20 Mad., 29

183. ——— *Suit by Hindu widow.*—*Held* that a suit for maintenance by a Hindu widow is cognizable by a Court of Small Causes in the mofussil. JUDAL KOM RANCHHOD MULJI *v.* HIRA MULJI . . 4 Bom., A. C., 75

RAMCHANDRA DIKSHIT *v.* SAVITRIBAI [4 Bom., A. C., 73

But *see quære* in RAMABAI *v.* TRIMBAK GANESH DESAI . . . . 9 Bom., 283

184. ——— *Suit for maintenance.*—In the absence of any special bond or other

NOBIN KALEE DEBEA *v.* BINDUBASHINEE DEBEA [5 W. R., S. C. C. Ref., 5

185. ——— *Suit for maintenance.*—In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage,—*Held* (following *Sidlingapa v. Sidava kom Sidlingapa, I. L. R.,*

[I. L. R., 2 Bom., 632

186. ——— *Act XI of 1865,*

father refused to maintain the child, which was therefore maintained by the mother, who now sued

NURBIBI *v.* HUSEN LAL I. L. R., 7 Bom., 537

187. ——— *Suit for breach of agreement for payment in nature of maintenance.*

that the Small Cause Court had jurisdiction to entertain a suit for a breach of the agreement. PAUPAMMA *v.* CHINNA REDDY . . 5 Mad., 432

188. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 38—Suit for maintenance based on a family arrangement.*—A suit for maintenance based on a family arrangement is within the jurisdiction of a Mofussil Small Cause Court. KOMU *v.* KRISHNA [I. L. R., 11 Mad., 134

189. ——— *Suit for maintenance fixed by decree of Court.*—A suit for maintenance fixed by a Court's decree is not cognizable by a Small Cause Court. PAHLUD SINGH *v.* AHLUD SINGH . . . . . . 6 N. W., 91

190. ——— *Suit for maintenance fixed by decree.*—A suit by a Hindu widow for arrears of maintenance, based on a decree charging immoveable property with the payment of the maintenance allowance, is not a suit of the nature cognizable in a Court of Small Causes. *Pahlud Singh v. Ahlud Singh, 6 N. W., 91,* followed. DHARAM CHAND *v.* JANKI . I. L. R., 5 All., 389

191. ——— *Suit for arrears of maintenance fixed by award.*—A suit for arrears

DURJAN SINGH *v.* SIBIA . . 7 N. W., 329

192. ——— Marriage—*Provincial Small Cause Courts Act (IX of 1887), sch II, art. 35, cl. (g)—Suit for actual pecuniary damages for breach of contract of marriage—Jurisdiction.*—A suit for actual pecuniary damages for breach o contract of marriage comes within cl. (*g*) of art. 35, sch. II of Act IX of 1887, and as such is excluded

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

from the jurisdiction of the Small Cause Court. KALI SUNKER DASS *v.* KOYLASH CHUNDER DASS [I. L. R., 15 Calc., 833

193. ———— Mesne profits—*Suit solely*

194. ———— *Suit for mesne profits—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31.*—A suit for the mesne profits of land for a period during which the plaintiff had been dispossessed by the defendant comes within art 31 of sch. II of Act IX of 1887, and therefore is not cognizable by a Small Cause Court. SRIRAM SAMANTA *v* KALIDAS DEY [I. L. R., 18 Calc., 81

195. ———— *Provincial Small Cause Courts Act (IX of 1887). sch II, art. 31—Suit for mesne profits under R500—Civil Procedure Code (Act XIV of 1882), s. 586—Second appeal.*—A suit for mesne profits is cognizable in Courts of Small Causes where the value of the subject-matter in dispute is less than R500, and art 31 of sch II of the Provincial Small Cause Courts Act does not apply thereto Such a suit falls within the provisions of s 586 of the Civil Procedure Code, and no second appeal lies from a decision in it *Kunjo Behary Singh* v *Madhub Chundra Ghose, I. L R., 23 Calc., 884,* followed. SESHAGIRI AYYAR *v.* MARAKATHAMMAL [I. L. R., 22 Mad., 196

LINGAYYA AYYAVARU *v.* MALLIKAYUNA AYYAVARU I. L. R., 22 Mad, 196 note

196. ———— Military men—*Military officer—Military Court of Requests.*—A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a Court of Requests is established. ABOO SAIT & CO. *v.* ARNOTT. ABOO SAIT & CO *v.* DALE . . . . 2 Mad., 439

197. ———— *Military Courts of Requests—Act XLII of 1860.*—Act XLII of 1860, s 6, did not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Stat 20 & 21 Vict., c. 66, s. 67. SHANMUGA *v.* MEDDLETON . 1 Mad., 443

198. ———— *Liability of European soldiers and their native wives to Small Cause Court jurisdiction.*—Reference to the High Court regarding the amenability of European soldiers and their native wives to Small Cause Courts in action for debt KEEFE *v.* CHRISTIE [5 W. R., S. C. C. Ref., 21

199. ———— *Non-Commis-*

of the Small Cause Court as a Civil Court, even in cases below thirty pounds. COHEN *v* MCCARTHY [14 W. R., 231

200. ———— *European soldier acting as army schoolmaster.*—A European soldier doing duty as an army schoolmaster, not being liable to a Court of Requests, is not exempted from liability to a Cantonment Court of Small Causes. The Mutiny Acts give soldiers no privileges as to liability to jurisdiction or actions. MAWADY BEEJARAJOO *v* HAYNES . . . 6 Mad., 83

201. ———— *Suit against*

that the Court had jurisdiction to try the case, the suit not being one exclusively cognizable by a Court of Requests under s. 103 of the Mutiny Act of 1864. BASTIAN *v.* TIREMAN . . 2 Mad, 389

202. ———— *Mutiny Act 30 & 31 Vict, c. 13, s. 99—Camp-followers—Jurisdiction of Civil Court.*—The defendant, a native of India, attached to the mess of a European regiment stationed at Sinchal, was held to come within the provisions of s 2 of the Mutiny Act (30 & 31 Vict., c 13) as being a "follower in or of Her Majesty's Indian forces," and therefore to be, by s. 99, exempt while in that position from the jurisdiction of the Civil Court NASIRUDDIN *v.* KHODABAKSH . . . 2 B. L. R., S. N., 7

S. C. MUSSEROODDEEN *v.* KHODA BUX [10 W. R., 386

203. ———— *Military officers.*—The 99th section of the Mutiny Act (30 & 31 Vict. c 13) exempts officers in all places in India, where anybody of Her Majesty's force may be serving, from the jurisdiction of the Civil Courts in respect of personal actions. Where the defendants were residents of Sinchal and Jallapahar, *and attached to the troops stationed there,—Held* that they were not amenable to the jurisdiction of the Small Cause Court at Darjeeling. HOSSEIN *v.* DICKENSON . . . 2 B. L. R., S N., 3

S. C. HOSSEINEE *v.* DICKINSON . 9 W. R., 112

204. ———— Money illegally exacted—

GANESH HATHI *v.* MEHTA VYANKATRAM HARJIVAN [I. L. R, 8 Bom., 188

205. ———— *Suit to recover illegal exaction of rent.*—A suit to recover an illegal

SMALL CAUSE COURT, MOFUSSIL —*continued*

2. JURISDICTION—*continued.*

exaction of rent will not lie in the Small Cause Court. SURBO CHUNDER DOSS *v.* WOOMANUND ROY [11 W. R., 412

206. — — — — *Suit to recover assessment by Government officials levied wrongfully —District Judge, Jurisdiction of.*—A suit to recover less than R500, levied as assessment by Government officials, is cognizable by a Court of Small Causes, and therefore, under s. 27 of Act XXIII of 1861, no special appeal lay. District Judges should ordinarily try such suits when brought in the District Court, and should not delegate the trial to their assistants. RAMCHANDRA BHIKAJI *v.* COLLECTOR OF RATNAGIRI . . . 10 Bom., 305

207. ———— **Money had and received**—*Suit for money had and received for plaintiff's use —Implied contract—Zamindari due.*—A zamindar as such claimed and realized from a tenant R20, being one-fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage. The tenant sued to recover such money, denying that any such usage existed. *Held* that the suit was in the nature of one for money had and received by the defendant for the plaintiff's use, and therefore cognizable in the Court of Small Causes. *Lachman Prasad* v. *Chammi Lal, I. L. R., 4 All., 6,* followed. COLLECTOR OF CAWNPORE *v.* KEDARI [I. L. R., 4 All., 19

208. — — ——— *Suit by assignee of profits against lambardar.*—The transferee of a mortgage of a share of an undivided estate sued the lambardar of the estate for the profits of such share for a certain year, the amount claimed being R500. *Held*, regarding such suit as one for money had and received to the plaintiff's use, that it was one of the nature cognizable in a Court of Small Causes. MUHAMDI BEGAM *v.* ABBAS ALI KHAN [I. L. R., 5 All., 531

209. *Money deposited under agreement to return mortgaged property.*—*C*, foreclosed, f the mort- possession *D* to surrender the mortgaged property to him if he deposited the mortgage-money in Court by a specific day. *D* borrowed the money for this purpose by means of a conditional sale of the property to *L* and deposited it in Court, the deposit was made after the specified day, and consequently *C* took possession of the property. The money deposited by *D* remained in deposit, and while there *C* caused it to be attached in execution of a money-decree he held against *D*, and it was paid to him. *L* thereupon sued C in the Munsif's Court to recover the money which amounted to R350. *Held* that the suit must be regarded as

I. L. R., 4 All., 6

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

210. ——————— *Suit for money received for plaintiff's use.*—When one of two or

of Act XI of 1865, and a suit will lie in the Small Cause Court by a creditor to recover his share. *Lachman Prasad* v. *Chammi Lal, I. L. R., 4 All., 6; Huro Mohun Roy* v. *Khettromonee Dossee, 12 W. R., 372; Sunker Lall Pattuck Gyawal* v. *Ram Kalee Dhamin, 13 W. R., 104,* referred to. SOHAN *v.* MATHURA DAS . . I. L. R., 6 All., 449

211. ——————— *Suit for share of compensation awarded for land acquired for public purposes.*—A suit was brought by some of the co-sharers in a putti of a mehal in which land had been taken for public purposes under the Land Acquisition Act, against the other co-sharers in the putti for the proportion due to them out of a sum of money which had been awarded as compensation for the acquisition of the land and which the defendants had received. *Held* that the suit was one for money had and received for the plaintiff's use, and was therefore cognizable by a Court of Small Causes. *Sohan* v. *Mathura Das, I. L. R., 6 All., 449,* followed. UMRAI *v.* RAM LAL . . I. L. R., 7 All., 384

212. —

namely R150,—*Held* that the suit was for money had and received for plaintiffs' use, and was cogniz-

alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then the suit would have fallen under cl. (31), sch. II of the Act. DAMODAR GOPAL DIKSHIT *v.* CHINTAMAN BALKRISHNA KARVE . . I. L. R., 17 Bom., 42

213. ———— **Mortgage**—*Money decree on*

I. L. R., 4 All., 501

214. ——————— *Money decree on mortgage bond.*—The Small Cause Court has no jurisdiction in the case of a claim for money due under a bond for less than R500, where the property pledged under the bond is made liable. TRIPOORA SOONDUREE *v.* KOYLASH CHUNDER BOSE [15 W. R., 265

215. ——————— *Suit to enforce contract pledging moveable property.*—Plaintiff sued

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

for recovery of a sum of money lent upon the pledge of personal property, and asked that the moveable property pledged might be declared liable *Held* that a Small Cause Court had jurisdiction to entertain a suit to enforce a contract pledging moveable property. APPAVU PILLAI *v.* SUBBAYA MUPPEN [2 Mad., 474

216. ———— *Suit on bond hypothecating land.*—In a suit for money due on a bond in which the payment is secured by mortgage of immoveable property, the Judge of a Small Cause Court is competent to try whether any debt is due upon the bond or not; but he cannot declare whether or not the particular land mentioned in the bond is charged for the payment of the debt, nor can he attach the land in execution of the decree. RAM SHEWUK SAHOO *v.* FUTTO ROY . 12 W. R., 184

WEBB *v.* RINCHIDEN . 14 W. R., 214

217 ———— *Suit to recover money on bond and to declare lien on property mortgaged by bond.*—A suit, the object of which is not only the recovery of money due upon a bond, but also a declaration of the plaintiff's lien on the property mortgaged by the bond, is not cognizable by the Small Cause Court. RAM NARAYAN MOOKERJEE *v.* SARODA DEBI . 6 B. L. R., Ap., 39

218. ———— *Suit for enforce-*

in the hands of other persons, who had purchased them at an auction-sale in execution of a decree

the category of a "suit for money due on a bond or other contract," or of a "suit for personal property, or for the value of such property," within the meaning of s 6 of the Mofussil Small Cause Courts Act (XI of 1865) *Ram Gopal Shah* v. *Ram Gopal Shah, 9 W. R., 136,* and *Godha* v. *Naik Ram, I. L. R., 7 All., 132,* referred to SURAJPAL SINGH *v.* JAIRAMGIR . . . I. L. R., 7 All., 855

219. ———— *Suit for enforce-*

1865, in which a second appeal would be barred by s 586 of the Civil Procedure Code. *Surajpal Singh*

220. ———— *Suit for order to enforce mortgage-decree against person and property of defendant.*—A suit to obtain an order from the Court that a decree upon a mortgage of a certain house should be enforced against the person and property of the defendant, who had purchased the house at auction subject to the plaintiff's mortgage, but had subsequently removed the materials of the same and so deprived the plaintiff of his lien thereon, not being a claim for debt, damages, or for the recovery of property, is not cognizable by a Court of Small Causes. OMER KURIM *v.* LALA SHEWAN LALL . . . . . 4 C. L. R., 291

221. ———— *Mortgage of moveable property—Suit for redemption.*—Where moveable property has been pledged in a mortgage

property, the Small Cause Court has no jurisdiction in the matter. BHUBOTARINEE GHOSANY *v.* JUGGERNATH TEWARY . . . . 16 W. R., 58

222. ———— Moveable property—*Act XI of 1865, ss. 19 and 20—Huts.*—Huts are not "moveable property" within the meaning of Act XI of 1865. RAJ CHUNDER BOSE *v.* DHARMACHANDRA BOSE

[2 B. L. R., A. C., 77: 8 B. L. R., 510 note 10 W. R., 416

ROHINI KANT GHOSE *v.* MAHABHARAT NAG [8 B. L. R., 514 note: 10 W. R., 258

223. ———— *Sale in execution of decree of Small Cause Court—Right of purchaser*—A hut is not "moveable property" within the meaning of s 19 of Act XI of 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it. NATTU MIAH *v.* NANDRANI

[8 B. L. R., F. B., 508: 17 W. R., 309

Contra, KASI CHANDRA DUTT *v.* JADUNATH CHUCKERBUTTY

[8 B. L. R., 512 note: 10 W. R., 29

224. ———— *Immoveable property—Act XI of 1865, s. 19.*—*Held* that, for the purposes of the Mofussil Small Cause Court Act, standing timber is not "moveable" property. *Nasir Khan* v. *Karamat Khan, I. L. R., 3 All. 168,* referred to. UMED RAM *v* DAULAT RAM

[I. L. R., 5 All, 564.

225. ———— *Sugar mill—Moveable property.*—A stone sugar-mill was held to be moveable or personal as distinguished from immoveable property. HURMUNGAL SINGH *v.* ATHUL SINGH . . . . . 4 N. W., 15

226. ———— *Trees—Growing crops—Moveable property.*—Trees and growing

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

crops are not moveable property. TOFAIL AHMUD *v.* BANEE MADHUB MOOKERJEE . 24 W. R., 394

227. — — — *Growing crops* —Growing crops are "immoveable property," and execution of a decree of a Small Cause Court cannot be had against them under s 19 of Act XI of 1865. GOPAL CHANDRA BISWAS *v.* RAMJAN SIRDAR [5 B. L. R., 194: 13 W. R., 275

MUHAMMAD SILEMAN *v.* SATU VALAD HARJI [5 Bom., A. C., 90

228. ——— *Suit for possession of tree or delivery of produce—Suit for definite quantity of produce of tree*—A Small Cause Court cannot entertain a suit for the possession of a tree,

LAKSHMINARASAMMA *v.* VEPA VENKATRAMADAS [3 Mad., 237

229. ——— *Suit for fruit upon trees—Suit for compensation for the wrongful taking of fruit upon trees—Immoveable property.* —When the damage or demand does not exceed in amount or value the sum of five hundred rupees, a suit for the fruit upon trees, or damages in lieu

230. ——— *Thatch.*—Suit to recover a thatch of a value less than R500 must be

231. ——— *Suit to recover baluta leviable on the crops of village lands.*—A suit to recover baluta leviable on the crops of village

232. ——— *Act XI of 1865, s. 6—Suit by vatandar mahars to recover "aya"—Immoveable property, What is*—A suit for baluta or aya is a claim in respect of a hak belonging to, and forming the emoluments of, an hereditary office amongst Hindus, and one in respect of immoveable

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

haks of the former are not personal property. APPANA *v.* NAGIA . I. L. R., 6 Bom., 512

233. ——— *Suit for share of hakwartanee allowance.*—A suit by an alleged sharer in a hakwartanee allowance to recover from

234. ——— *Suit for malikana allowance*—A suit for a malikana allowance concerns the proprietary right in land. A dispute

235. ——— *Act XI of 1865,*

against *B* for the amount of the loan and attached the buffalo
aside at th
loes from
to *A*. *A*
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pledged to
sum due to him. *Held* that such a suit was not a suit within s. 6, Act XI of 1865, to recover personal property, or the value of personal property, and was not cognizable by the Small Cause Court. RAM GOPAL SHAH *v.* RAM GOPAL SHAH . 9 W. R., 136

236. ——— *Madras Rent*

237. ——— Municipal Commissioners —*Act XI of 1865, s 9—Suit against Municipal*

238. ——— Municipal tax—*Suit to recover Municipal tax*—A suit to recover a Municipal tax is not cognizable by a Small Cause Court constituted under Act XI of 1865. LOGAN *v.* KUNJI [I. L. R., 9 Mad., 110

239. ——— *Wrongful assessment of profession tax—Madras District Municipalities Act (Mad. Act IV of 1884), ss. 49, 50—Provincial Small Cause Courts Act (IX of*

SMALL CAUSE COURT, MOFUSSIL
—*continued.*

2. JURISDICTION—*continued.*

1887), sch. II, para. 1—Order of a Local Government—The Municipality at Tuticorin demanded R50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest, and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court. *Held* the Court had jurisdiction to hear and determine the suit, ss 49 and 50 of the Madras District Municipalities Act of 1884 and sch. II, cl. 1, of the Provincial Small Cause Courts Act (IX of 1887) are not applicable to such a suit. TUTICORIN MUNICIPALITY *v.* SOUTH INDIAN RAILWAY CO

[I. L. R., 13 Mad., 78

240. ——————— *Provincial*

of a bustee.—A suit by the proprietor of bustee land for the recovery of Municipal taxes from the owner of a hut in the bustee is cognizable by the Provincial Small Cause Courts. BROJONATH MITTRA *v.* GOPI SHAKRANI . I. L. R., 23 Calc., 835

241. ——— Order of Civil Court—*Suit to set aside miscellaneous order of Civil Court.*—A Small Cause Court has no jurisdiction to set aside a miscellaneous order passed by a Civil Court. BUNSEEDHUR *v.* KUDDEY LALL

[1 N. W., 112; Ed. 1873, 198

242. ——— Partnership account—*Suit*

243. ——————— *Act XI of 1865, s. 6.*—Where defendant had been plaintiff's servant in charge of plaintiff's shop, on the understanding that he was to be remunerated by a small share of

244. ——————— *Suit involving question of partnership account.*—*A*, *B*, and *C*, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated the

of rent due to *A* for the benefit of the joint estate,

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the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes. RAMTONU ACHARJEE *v.* PEARYMOHUN ACHARJEE

[I. L. R., 6 Calc., 551 : 7 C. L. R., 557

245. ——————— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 29 (c)—Suit by a retired partner for the consideration due on account of his retirement.*—A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not a suit for balance of a partnership, and is not excluded from the jurisdiction of a Court of Small Causes. FAUJI LAL *v.* CHANGA MAL

[I. L. R., 19 All., 513

246. ——————— *Settlement of accounts—Promise to pay balance.*—The plaintiff

MARIMUTHU *v.* SAMINATHA PILLAI

[I. L. R., 21 Mad., 336

247. ——— Prisoners' Testimony Act (XV of 1869)—*Mofussil Small Cause Court, Judge of—Defendant in custody.*—A Judge of a Small Cause Court in the mofussil could direct the

[5 B. L. R., 215 : 13 W. R., 278

248. ——— Purchase-money—*Civil Pro-*

249. ——————— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 11—Suit to recover purchase-money by purchaser ejected from possession of his purchase by a third person*—

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued.*

may be necessary for the defendant to show that he had a good title. Gool Khan v. Tetar Goala [4 C. W. N., 63

250. ——— **Receiver**—*Power to appoint receiver—Attachment and sale of land—Civil Procedure Code, 1877, s. 268.*—A Court of Small Causes

251. ——— **Registration Act**—*Suit on bond under s. 52, Registration Act, 1864.*—The Court which had jurisdiction in a proceeding to enforce payment, under the provisions of the Registration Act, XVI of 1864 of a registered bond was

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which was a suit under s. 53 of Act XX of 1866.

252. ——— *Bond registered under Act XX of 1866, s. 53.*—A suit upon a bond

253. ——— **Rent**—*Suit for money for permission to tap date-trees*—Suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single season, —*Held* that such a suit was not one for rent, but for the breach of a contract in respect of which a Small Cause Court has jurisdiction Deb Nath Ghose v. Pachoo Mollah 6 W. R., Civ Ref., 8

254. ——— *Suit by landholder against purchaser of produce of tenant's land for rent—Damages.*—*B*, who held a decree for money against *G*, a cultivator, brought to sale in execution of his decree the produce of certain land occupied by *G*, and such produce was purchased by *S*. The landholder, to whom *G* owed rent for the land sued *G* and *S* for the amount of the rent, on the ground that under s. 56 of the N.-W. P. Rent

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued.*

255. ——— *Suit for rent under agreement—Failure to prove agreement.*—In

plaintiff contended further that the defendant had agreed to pay him rent for the land in dispute. *Held* that the material issue was as to the alleged agreement, and that, if the plaintiff failed to prove it, the issue would be as to whether the land belonged to him or to the defendant, and would require to be settled in the Civil Court. Khudeeram Biswas v. Koral Budonee Dossee . . 21 W. R., 379

256 ——— *Tenant and under-tenant—Assignment of rent—Set-off*—The plaintiff held an under-tenure within a jote jumma held by *B* within *D*'s zamindari and under an assignment from *B* paid to the zamindar *D* a sum of money as rent due by *B* to *D*. Ultimately *D*, ignoring such payment, recovered the rent from *B*

his payment to *D* against the rent due to *B*, the Collector had no jurisdiction to try whether *B* owed the plaintiff a sum equal to the rent, and that the

257. ——— *Suit for use of land—Damages—Rent*—Suit for rent or hire of

258. ——— *Suit for rent of land with buildings*—In a suit for rent of land,

259. ——— *Arrears of rent of homestead, or bastu land, Suit for—Provincial Small Cause Courts Act (IX of 1887), sch. II, cls 7 and 8.*—A Mofussil Small Cause Court

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

has no jurisdiction to entertain a suit for arrears of rent of homestead or bastu land under the provisions of the Provincial Small Cause Courts Act (IX of 1887). UMA CHURN MANDAL *v.* BIJARI BEWAH . . . I. L. R., 15 Bom., 174

260. ——— *Suit for sums stipulated to be paid for use of private path.*—A

261. ——— *Suit on instalment-bond for nuzzur or salami.*—Plaintiff sued in a Small Cause Court on an instalment-bond for R81. The bond had been executed for nuzzur or salami contemporaneously with the execution of a pottah and kabuliat, by which the defendants agreed to pay the plaintiff R335 a year for two years, as rent for certain land. The pottah and kabuliat had not been registered A previous suit brought by the plaintiff, under Act X of 1859, had been therefore dismissed,

clearly not for rent, nor was it an abwab or illegal cess ; whether it was nuzzur or salami was immaterial. DINANATH MOOKERJEE *v.* DEBNATH MULLICK

[5 B. L. R., Ap, 1: 13 W. R., 307

262. ——— *Suit for rent and a sum as penalty for non-payment.*—Where a party sued for R17-8 as rent, and a like sum as penalty for non-payment thereof, it was held that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit. HINOUN SOWDAGUR *v.* BOISTUM CHURN OJAH . 6 W. R., Civ. Ref., 5

263. ——— *Suit for ar-*

KERBUTTY. KEDAR NATH CHUCKERBUTTY *v.* GOPEE NATH GHOSE . . 23 W. R., 426

264. ——— *Suit for rent—Act XI of 1865, s. 6.*—A suit to assess rent at an increased rate upon the defendants, and for a decree for rent at such rate in respect of land situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of s. 6, Act XI of 1865, and is maintainable in the ordinary Civil Courts, and not in the Small Cause Courts JOY KISHORE CHOWDHRAIN *v.* NUBEE BUKSH

[17 W. R., 178

265. ——— *Suit for rent of land used for building purposes*—A suit for the rent of land used for building purposes is cognizable in a Mofussil Court of Small Causes. PEAREE BEWAH *v.* NOKOOR KURMOKAR . . . 19 W. R., 308

GOKHUL CHUND CHATTERJEE *v.* MOSAHROO KANDOO . . . . . 21 W. R., 5

266. ——— *Suit on instalment-bond for arrears of rent.*—A suit upon an in-

but not so applied by the decree-holder. SHUTT CHURN GHOSAL *v.* MAHOMED ALLY. TARINEE CHURN ROY *v.* GOPAL KISTO ROY

[2 W. R., S. C. C. Ref., 5

267. ——— *Suit on document given for arrears of rent—Act XI of 1865, s. 6.*—A suit to recover arrears of rent on a tahood kistbundi, under which defendant had been appointed a tahsildar to collect rents, having been filed before the Munsif, it was returned as being cognizable by the Court of Small Causes The Judge of the latter Court, seeing that the instalment-bond on which the suit was brought was exactly in the form of a

ASSAD KHAN . . . 18 W. R., 444

268. ——— *Suit for rent where there is no contract to pay it.*—A suit was brought in the Small Cause Court by a zamindar against a raiyat for arrears of rent. The plaintiff alleged that he had tendered pottahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the pottahs *Held* that the suit was not cognizable by a Court of Small Causes, there being no contract between the parties for the payment of rent VENKATACHALA REDDIAR *v.* NARAYANA REDDY . . 4 Mad., 393

269. ——— *Suit for arrears of phulkur*—A suit for arrears of rent of the description known as phulkur cannot be tried by a Small Cause Court. GOBIND SOOKOOL *v.* GOKOOL BHUKUT . . . . . 23 W. R., 304

270. ——— *Act XI of 1865, s. 6—Jurisdiction—Suit for refund of rent voluntarily paid to a wrong person.*—A Mofussil Court of Small Causes has no jurisdiction under s. 6 of Act XI of 1865 to entertain a suit for a refund of money paid as rent, in which it is found that the payment was made to a wrong person voluntarily, and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenure-holder. RAM CHAND DUTT *v.* MOSAI SANTAL

[I. L. R., 11 Calc., 738

SMALL CAUSE COURT, MOFUSSIL
—*continued.*

2. JURISDICTION—*continued.*

271. ———— *Suit for rent—Suit at full rates after remission for years—Act XLII of 1860, s 3—"Suit"—Mad. Regs XXVIII of 1802 and V of 1822, s. 2.*—A zamindari was attached in 1827, and the Collector, without authority from the Board of Revenue or the Government, remitted a portion of the tirvai, and continued such remission until 1842, when the zamindari was restored. The then zamindar and his successors continued the remissions, always, however, entering the faisal rates in the pottahs and setting down the remissions as munasib. In 1861 the plaintiff became lessee of the zamindari, and in 1862, pursuant to notice, he tendered pottahs for Fasli 1272 to the

word "suit" in the proviso of s 3 of Act XLII of 1860 referred to regular suits before a Collector under Act X of 1859, and not to the summary proceedings under Regulation XXVIII of 1802 and s 2 of Regulation V of 1822. ADIMULAM PILLAI *v.* KOVIL CHINNA PILLAI . . . 2 Mad., 22

But *see* UPPALAPATI GANAKAYA GARU *v.* BALAVI RAMUDU . . . . 2 Mad., 475

272. ———— *Suit for damages after notice to quit or pay rent.*—A notice was issued on defendant requiring him to quit the land or pay rent, and defendant refused to do either. Plaintiff therefore rightly brought his suit for damages, and not for rent, and the Small Cause Court had jurisdiction to entertain it. But as the Court rejected the suit as being substantially one for rent, its order was set aside, and the suit ordered to be restored to the file of that Court. BHOOBUN MOHUN BOSE *v* CHUNDERNATH BANERJEE [17 W. R., 69

273. ———— *Damages on account of rent—Suit for use and occupation—Trespass—Ejectment—Mesne profits* —The plaintiff, alleging that the defendant, with her per-

jurisdiction The plaintiff's proper remedy was by

274 ———— "*Damages on account of rent*"—*Suit for use and occupation—Trespass—Ejectment—Mesne profits* —The plaintiff obtained a decree declaring him entitled to a certain house. He thereupon gave to the defendant, who was in occupation, notice to pay him rent, and on default of such payment he sued the defendant in the Court of Small Causes to recover "damages on account of rent." *Held* that the suit was not maintainable in a Court of Small Causes, which could not be used as a medium for ejecting, by indirect means, a person in possession of immoveable property. *Held* also that the plaintiff's suit was only maintainable as a suit for damages on account of trespass, and in such a suit it would be necessary for the plaintiff to prove possession prior to the trespass, or to have obtained a *decree in ejectment* which would relate back to the date of the trespass. The plaintiff had obtained nothing more than a decree declaring him to be the owner of the house; but this did not necessarily import a right to imme-

275. ———— *Suit for the recovery of damages for the use and occupation of land.*—A suit for the recovery of damages for the use and occupation of land is within the jurisdiction of the Mofussil Small Cause Courts. MAKHAN LALL DATTA *v.* GORIBULLAH SARDAR [I. L. R., 17 Calc, 541

KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN [I. L. R., 24 Calc, 557

276. ———— *Provincial Small Cause Courts Act (IX of 1887), sch II, art 7—Suit for damages for use and occupation of land.*—A suit for damages for use and occupation of land is cognizable by a Court of Small Causes. VIRA PILLAI *v.* RANGASAMI PILLAI [I L. R., 22 Mad., 149

277. ———— *Suit for jodi—*

[I. L. R., 21 Mad., 245

278. ———— *Provincial Small Cause Courts Act (IX of 1887), s 15 and*

cedure because a Judge of a Court of Small Causes has been invested by the Local Government with authority to exercise jurisdiction with respect thereto

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

under s. 15 and sch. II, art. 8, of the Provincial Small Cause Courts Act, 1887. A second appeal

Contra, SOUNDARAM AYYAR *v.* SENNIA NAICKAN [I. L. R., 23 Mad., 547

decided by a Full Bench and overruling the above case.

279. ———————— *Suit by tenant for excess payment of rent—Civil Procedure Code (Act XIV of 1882), s 586—Landlord and tenant —Bengal Tenancy Act (VIII of 1885), s. 144.—* A suit between landlord and tenant of the recovery by the tenant of excess payments taken by the landlord in respect of the rent of the holding, and not exceeding R500, is a suit cognizable by the Small Cause Court, and under s. 586 of the Civil Procedure Code no second appeal lies. There is nothing in s. 144 of the Bengal Tenancy Act to override the provisions of s 586 of the Civil Procedure Code, as it determines only the venue and has no bearing upon the nature of the suit RANGO ROY *alias* RUNG LAL ROY *v.* HOLLOWAY
[I. L. R., 26 Calc. 842
4 C. W. N., 95

280. ———————— *Suit by a landlord against a tenant for a certain sum payable by him out of the rent to a third person by assignment—Whether such a suit is one for rent or for damages —Held* (by the Full Bench) that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages. *Rutnessur Biswas v. Hurish Chunder Bose, I. L. R., 11 Calc., 221,* referred to. *Mohabut Ali v. Mahomed Faizullah, 2 C. W. N., 455,* approved of. BASANTA KUMARI DEBYA *v.* ASHUTOSH CHUCKERBUTTY . . . I. L. R, 27 Calc., 67
[4 C. W. N., 3

281. ———————— *Suit for rent in kind or its money value—Suit for rent—Provincial Small Cause Courts Act (IX of 1887), sch. II, art 35—Bengal Tenancy Act (VIII of 1885), s 3, cl 5.*- A suit for produce rent or its money value is a suit for rent under the Bengal Tenancy Act, and not a suit for damages for breach of contract; such a suit is therefore not cognizable by a Provincial Small Cause Court. *Tajuddin Khan v. Ram Parshad Bhagat, I. L. R., 1 All, 217,* followed. *Lachman Parshad v. Hoolas Mahton, 2 B L R, Ap. 27 : 11 W. R., 151; Mullick Amanut Ali v. Ok'oo Pasi, 23 W. R., 140;* and *Jumna Doss v. Gausee Meah, 21 W. R., 124,* referred to. SKOONA MEHTA *v.* RAJANI BISWAS
[1 C. W. N., 55

282. ———————— *Landlord and tenant—Suit for rent by an assignee of landlord whether suit for rent or money—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 8—*

chased and also half of the arrears for 1300. Plaintiffs brought a suit for recovery of the whole rent of 1300, the persons to whom they had sold a portion of those arrears being made *pro formâ* defendants. The claim was not exceeding R500 in value *Held* that the suit brought by the assignee against the tenant is a suit to recover the rent within the meaning of art. 8 of sch. II of the Provincial Small

Dossee v. Brindabun Chunder Mozoomdar, Marsh., 199. Lall Mohun Singh v. Troyluckonath Ghose, 14 W R, 456, and *Reedoy Monee v. Sibbold, 15 W. R., 344,* followed. *Lalla Bhugwan Sahoy v. Sungessur Chowdhry, 19 W. R., 431,* distinguished. MUNSAR *v* LOKNATH ROY . 4 C. W. N., 10

283. ———————— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s 5 —Provincial Small Cause Courts Act, sch. II, art. 8 —Held* by the Full Bench (BANERJEE J, dissenting) that a suit brought by an assignee of arrears of rent, after they fell due, for the recovery of the amount due, is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes SRISH CHUNDER BOSE *v* NACHIM KAZI
[I. L. R, 27 Calc, 827
4 C. W. N., 357

MOHENDRA NATH KALAMAREE *v.* KAILASH CHANDRA DOGRA . 4 C W. N., 605

284. Sale-proceeds—*Suit for refund of moneys paid under order of Court.*—A suit to recover a refund of moneys paid under an order of Court is not cognizable by a Court of Small Causes. GRISH CHUNDER MUNDUL *v.* DOORGA DOSS
[I. L. R., 5 Calc., 494

285. ———————— *Act XI of 1865 —Civil Procedure Code, 1882, s. 295—Suit for refund of assets paid in execution of decree.*—A suit und
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378, dissented from. HARIHARA *v.* SUBRAMANYA
[I. L. R., 9 Mad., 250

286. ———————— *Second appeal —Sale-proceeds, Suit for share of.*—A suit by one decree-holder against another for the money received

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decrees, is a suit of the nature cognizable in a Court of Small Causes, and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit. MATA PRASAD *v* GAURI . . I. L. R., 3 All., 59

287. ——— *Civil Procedure Code, 1882, s. 295—Suit for refund of proceeds of execution-sale.*—*S* and *L* held mortgage-bonds executed in their favour by the same person. *S*'s bond was dated the 16th June 1882, and was registered, the registration being compulsory, *L*'s bond was of prior date, the 30th December 1880, and was not registered, the registration being optional. Both instituted suits on their bonds against the obligor, and obtained decrees for sale of the property, the decrees being passed on the same day. The property was attached in execution of both decrees on the 14th August 1882. The sale-proceeds were divided by the Court executing the decrees equally between the parties by an order dated the 1st May 1883, notwithstanding that *S* claimed the whole on the ground that he was an encumbrancer under a decre... there-
fore ... with
this ... the
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the suit, being one to compel the defendant to refund assets of an execution-sale which he was not entitled to receive, and to set aside the order of the Court exe-...

be regarded as a suit of the nature cognizable in a Court of Small Causes SHAHI RAM *v.* SHIB LAL [I. L. R., 7 All., 378

288. ——— *Suit for money paid for property sold where judgment-debtors had no interest—Provincial Small Cause Courts Act (IX of 1887), s 15.*—*Held* that a suit to recover from a decree holder money paid as the price of ...

Neither art. 2 nor art. 35, cl. (j), sch. II of Act IX of 1887, excludes such a suit from the cognizance of the Small Cause Courts PRASANNA KUMAR KHAN *v.* UMA CHARAN HAZRA . . 1 C. W. N., 140

289. ——— *Proceeds of immoveable property—Jurisdiction—Act XI of 1865, s. 6—Money had and received—Sale of tenure—Co-sharers*—The plaintiff and the defendant were co-owners of a certain talukh. The zamindar brought a suit for arrears of rent of the talukh against the defendant, obtained a decree, and in execution of that decree sold the tenure. The proceeds of the sale, after satisfying the zamindar's decree, were taken by the defendant, and the plaintiff instituted the present suit to recover an 8-anna share thereof. *Held* that such a suit was not cognizable by a Small Cause Court. *Mata Prasad* v. *Gauri, I. L R., 3 All., 59,* dissented from. RAM COOMAR SEN *v.* RAM COMUL SEN . . . . I. L. R., 10 Calc., 388

290. ——— Salvage—*Suit for salvage—Abandonment of property saved*—A suit for salvage, even when the saved property has been abandoned by those in charge of it, is not cognizable by a Court of Small Causes KISHORE SINGH *v* GUNNESH MOOKERJEE . . . . 9 W. R., 252

291. ——— Tax—*Suit for amount of trade impost—Suit for rent.*—A Court of Small Causes has no jurisdiction to entertain a suit to recover the ...

293. ——— — *Question incidentally arising.*—If a *bond fide* question of title arises incidentally in a Small Cause suit, the Court should determine it. ALAGIRISAMI NAIKER *v.* INNASI UDAYAN . . . I. L. R., 3 Mad., 127

294. ——— *Right to cut trees*—A Court of Small Causes may try incidental questions of title which are indispensable to the decision of the claim before it,—*e g*, a right to land on which depends a party's right to cut trees. RADHA CHURN GANGOOLY *v.* GUDADHUR BAHADOOR [15 W. R., 166

295. ——— *Suit for produce of land.*—If the right of the plaintiff be a question raised in a suit brought in a Court of Small Causes for recovery of value of produce, it is quite ...

296. ——— *Suit for damages for loss of produce.*—The jurisdiction of a Small

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued*

Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. *Per* TURNER, C.J.—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. MANAPPA MUDALI *v.* MCCARTHY . I. L. R., 3 Mad., 192

297. ——————— *Act XLII of 1860.*—Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land. Defendant pleaded that he was entitled to do so under his pottah. *Held* the Court had jurisdiction to try the question of the genuineness of the pottah. RAGHU RAM BISWAS *v.* RAM CHANDRA DOBAY

[B. L. R., Sup. Vol., 34 : W. R., F. B., 127

SHUMBHOO CHOWDHRY *v.* COMBS . 2 W. R., 179

RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM [9 W. R., 336

SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . . . 18 W. R., 104

But *see* INAYAT KHAN *v.* RAHMAT BIBI [I. L. R., 2 All., 97

and PACHOO RAREE *v.* GOOROO CHURN DASS [15 W. R., 556

298. ——————— *Question of amount due on bond mortgaging land*—Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation [illegible] by [illegible] was due on the bond, and also to try the question of payment by means of the rent assigned. MOHIMA CHUNDER MOOKERJEE *v.* RAM CHURN ROY

[6 W. R., Civ. Ref., 16

299. ——————— *Suit for arrears of malikana allowance—Act XI of 1865, s. 6*—A sold a share in immoveable property to *M* by a registered deed of sale, which contained the following provision "The said vendee is at liberty either to retain possession himself or to sell it to some one else, and he is to pay R25 of the Queen's coin to me annually (as malikana), which he has agreed to pay" *M* mortgaged the property to *B*, who obtained possession, and, after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held*, upon a preliminary objection made with reference to s. 586 of the Civil [illegible] question was directly involved; and that consequently s 586 of the Code had no application, and a second appeal would lie. *Mohamed Karamut-oollah* v. *Abdool M*[illegible] *v Chatter* [illegible] referred to. *I. L. R.*, [illegible] *Husain*, *I. L. R.*, *4 All.*, *134*; and *Kadureesur Mookerjea* v *Gooroo Churn Mookerjea*, *2 C. L. R.*, *389*, distinguished. CHURAMAN *v.* BALLI

[I. L. R., 9 All., 561

300 ——————— *Suit for arrears of* [illegible] Cause [illegible] taken [illegible] claimed, [illegible] title. SUBBIRAMANIYA AYYAN *v.* VELAYUDA DEVAR [I Mad., 212

301 ——————— *Denial of title.*—A Small Cause Court has no jurisdiction to try a [illegible] between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord VENKATACHALAM *v.* THIMMA NAIKAN . . . . 5 Mad., 64

302. ——————— *Mahomedan law.*—The seven heirs of a deceased Mahomedan, under an agreement among themselves, took equal shares of 14 annas of his estate and allotted 2 annas to rehalallah, *i.e.*, devoted the profits to charitable purposes under the management of one of their number. On the death of such manager, three of the heirs sued his tenant for a proportion of rent equal to their shares and three sevenths on account of rehalallah. The remaining heirs opposed the claim in regard to rehalallah, which they said the plaintiffs [illegible]

[illegible]

303. ——————— **Trusts**—*Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 18—Gift, Construction of—Hindu law—Suit relating to a* [illegible]

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

as kanom on the land T. . . . The proportionate rent on 2,320 fanams is 265 paras. This quantity of paddy . . . shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons." After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said kanom being paid, that money shall be received by my sons, and shall be invested in some other property, which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same In a suit by a grandson of the donee to recover his share of the income, —*Held* that the suit "related to a trust" within the meaning of the Provincial Small Cause Courts Act, sch II, art. 18. KRISHNA AYYAN *v.* VYTHIANATHA AYYAN

[I. L. R., 18 Mad., 252

304.————— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 18—Suit by temple manager against his predecessor for damage sustained by temple—Suit relating to a trust.*—A suit by the manager of a temple against his predecessor in office for damages sustained by the [illegible]

305. ————— *Suit against person collecting or receiving subscriptions for building a temple—Trustee—Civil Procedure Code (Act XIV of 1882), s. 30.*—A person collecting and receiving subscriptions for the purpose of building a temple, in pursuance of a resolution come to at a meeting of the community, holds them in the capacity of a trustee, and a suit in respect thereof should be filed, under s. 30 of the Civil Procedure Code, in a Subordinate Judge's Court, and not in a Small Cause Court. MAHOMED NATHUBHAI *v.* HUSEN

[I. L. R., 22 Bom., 729

306.————Wages—*Suit for wages against European British subject.*—A suit for wages under R50, alleged to be due from a European British subject to a native, can be tried in a Small Cause Court in the mofussil. RAMJAN BEG *v.* COOK

[6 B. L. R., Ap, 91; 14 W. R., 428

307.————Wrongful distraint-*Suit to recover value of goods distrained for rent under Mad Act VIII of 1865, s. 27—Parties—Procedure*—A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865, and forcibly carried away from the person distraining, may be maintained in a Court of Small Causes under s. 27 of the Act. The suit may be brought either by the landlord or the person authorized to distrain A petition and summons and order, after hearing the parties and their evidence, appear to be the fitting mode of exercising the jurisdiction. VADAMALAI THIRUVANA TEVAR *v.* CARUPPEN SERVAI. ZAMINDAR OF SAITTUR *v* CARUPPEN SERVAI

[4 Mad., 401

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*concluded.*

308.————— *Provincial Small Cause Courts Act (IX of 1887), art. 35 (j)—Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 15—Civil Procedure Code (Act XIV of 1882), s 646B—Suit for the value of property illegally retained—Jurisdiction of Small Cause Courts.*—Certain moveable property having been distrained under s. 15 of the Rent Recovery Act (Madras), 1865, such distraint was set aside and the property ordered to be restored to the owners. That order not having been carried out, the owners filed suits on the Small Cause side of the Courts of the Subordinate Judge and the District Munsif for the value of the property so illegally retained. *Held* that the suits were not excepted from the jurisdiction of the Small Cause Courts by art 35 (j) of sch. II of the Provincial Small Cause Courts Act, 1887. CHAKRADHARUDU *v.* VENKTIARAMAYYA

[I. L. R., 22 Mad., 457

3. PRACTICE AND PROCEDURE.

(a) EXECUTION OF DECREE.

309. ————Power of execution—*Change of jurisdiction.*—A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction. In such execution the course to be pursued was that prescribed by ss 285 and 286, Code of Civil Procedure, 1859 KODOO MUNDUL *v.* SHUSHEE SHIKHUR SIRCAR . . 16 W. R., 227

See ANONYMOUS

[B L R., Sup. Vol., 886 . 9 W. R., 175

Contra, MANSUK MOSUNDAS *v.* SHIVRAM DEVISING . . . I. L. R., 2 Bom., 532

GRISH CHUNDER KUR *v* KRISTO CHUNDER GHOSE . . . . . 18 W R., 123

ANONYMOUS . . 3 W. R., S. C. C. Ref., 7

310. ————Mode of execution—*Interest in moveable property, Power to sell —Act XI of 1865, ss 6 and 20.*—A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the second proviso of s 6 of Act XI of 1865 Until the judgment-creditor has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immoveable property under s 20 of the Act AHOBALASCO CHETTY *v* VENKATA KRISTNAMMA

[5 Mad., 275

311 ————— *Execution of decree—Suit against member of undivided family.*—A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment

SMALL CAUSE COURT, MOFUSSIL —*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. ITAHVIEN *v.* CHITHAMBARIEN

[5 Mad., 312

312. ———— *Act XI of 1865, ss. 19 and 20—Rights and interests of judgment-debtor under land plede ...* [illegible]

[6 N. W., 129

313. ———— *Power of Court to attach salary—Civil Procedure Code, 1882, ss. 223, 268* —A Mofussil Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court therefore cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally v Ashotosh Gangooly,* 3 C. L. R., 30, followed. PARBATI CHARAN *v.* PANCHANAND . I. L. R., 6 All., 243

314. ———— Transfer for execution—*Act XI of 1865, s. 20—Transfer to, and execution by, Munsif's Court—Sale of land—Certificate not filed—Title of purchaser.*—A decree passed by a Subordinate Judge's Court on the Small Cause side ... [illegible] possession of the land,—*Held* that N was entitled to recover. NAGIREDDI *v.* RAMANNA

[I. L. R., 7 Mad., 592

315. ———— *Act XI of 1865, s. 20—Civil Procedure Code, 1882, s. 223—Small Cause decree of Subordinate Judge—Execution against immoveable property—Co-ordinate jurisdiction of Subordinate Judge and District Munsif—Execution by District Munsif.*—The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been ... [illegible] ... *Held* that s. 20 of Act XI of 1865 was not modified by s. 223 of the Code of Civil Procedure, and that the Munsif's Court was therefore bound to execute the decree. KAHANARAMA *v.* RANGA

[I. L. R., 8 Mad., 8

(*b*) NEW TRIALS AND REVIEWS.

316. ———— Act XI of 1865, s. 21—*Review—Limitation Act, 1877, art. 173*—S. 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause Courts in ... [illegible] ... stances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHUNDRA PUROT

[I. L. R., 10 Calc., 297

317. ———— *Civil Procedure Code, 1877, ss. 623, 624—Power to grant new trial of case tried by predecessor.*—A Judge of a Mofussil Small Cause Court was held to have jurisdiction to direct a new trial of a case tried by his predecessor, ... [illegible] ... of the Code of Civil Procedure. SHUMSHER ALLY *v.* KURKUT SHAH

[I. L. R., 6 Calc. 236 : 6 C. L. R., 549

318. ———— *New trial of ex-parte case—Re-opening of case against all the defendants*—It may be competent to the Judge of a Small Cause Court ... [illegible] ... tion to the case of all, but he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object. DOOKHEE KHAN *v.* RAJESSUREE RANEE

[15 W. R., 371

319. ———— *Fraudulent confession of judgment—New trial.*—A Small Cause Court Judge may on the ground of fraud and false personation grant a new trial where judgment has been passed on a confession of judgment. IN THE MATTER OF HURO MONEE DOSSEE . 17 W. R., 48

320. ———— *Application for new trial, Ground for—Computation of time pre-* ... [illegible] ... MUDDUN RAM PAL . . . 18 W. R., 454

321. ———— *Third application for new trial.*—A third application for a new trial in

SMALL CAUSE COURT, MOFUSSIL—*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

a Court of Small Causes is not admissible under s. 21, Act XI of 1865. DHUNNOO CHOWDHRY *v.* BUKSHUN [12 W. R., 266

322.

on such later date a defendant is prevented by sufficient cause from appearing, and in default of such appearance an *ex-parte* decree is given against him, he may apply under the first part of s. 21 for an order to set aside such decree. IN THE MATTER OF DOYAL MISTREE *v.* KUPOOR CHUND [I. L. R., 4 Calc., 318: 3 C. L. R., 482

323. ——— *Procedure—Deposit of amount of decree and costs.*—A defendant desiring a new trial of a case decreed against him in a Small

entitle the party to ask for a new trial. *Semble*—The "next sitting of the Court" mentioned in s. 21, Act XI of 1865, refers to the next sitting after the decision complained of; and the words "within the period of seven days from the date of the decision" apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court. KAILAS CHANDRA SANNEL *v.* DOWLAT SHEIKH . 5 B. L. R., Ap., 57: 14 W. R., 42

324. ——— *Deposit of amount*

s. 21 of Act XI of 1865. NAVROJI PESTANJI *v.* MANSUKH JAYACHAND . 5 Bom., A. C., 70

325. ——— *Deposit of costs.*—Act XI of 1865, s. 21, does not require a plaintiff applying for a new trial to deposit the costs of the defendants. MOHIMA CHUNDER ROY *v.* HURNATH CHUNGO . . . . . 18 W. R., 446

326. ——— *Notice of application.*—Where one of the provisions of s. 21, Act XI

S. C. PETUMBER SHADOO KHAN *v.* DOYA MOYEE DOSSEE . . . . 12 W. R., 17

327. ——— *Practice—Notice of application—Review—Civil Procedure Code (Act X of 1877), s. 623.*—The notice clause in s. 21, Act XI of 1865

Procedure without resorting to Act XI of 1865. RATAN KRISHEN PODDAR *v.* RAGHOO NATH SHAHA [I. L. R., 8 Calc., 287: 10 C. L. R., 275

See ISAN CHUNDER BANERJEE *v.* LUCHUN GOPE. KEMP *v.* PREMNARAIN SINGH [I. L. R., 5 Calc., 699: 5 C. L. R., 539

328. ——— *"Next sitting of the Court"—Judge holding two offices.*—Where the same person holds the office of Judge in two Small

DER BISWAS *v.* OKHOY CHUNDER BISWAS. GOPEE MOHUN BANERJEE *v.* SREEKANTO BOSE [13 W. R., 103

329. ——— *Application before execution of decree had been taken out for new trial.*—An application presented to a Small Cause Court on the 25th May to set aside an *ex-parte* decree obtained, on the 14th March, where no process had been executed for enforcing the decree, was held to fall within the first of the two provisions in s. 21, Act XI of 1865. SHOJONEE DOSSIA *v.* DHURONEE DHUR GHOSE . . . . . 16 W. R., 226

330.

the formality of telling her to first give notice and apply again. VAUGHAN *v.* LALL CHAND GHOSE [15 W. R., 281

331. ——— *Ex-parte decree*

took out execution. The judgment-debtor appeared within thirty days of the decree and applied for stay of execution on the ground that the bond was a

SMALL CAUSE COURT, MOFUSSIL —*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

332.——— *Second applica-*

333.——— *Application for new trial—Deposit of decretal amount or security—Provincial Small Cause Courts Act (IX of 1887), s. 17.*—It is a condition precedent to the granting of

Ramasami v. *Kurisu, I. L. R., 13 Mad., 178,* dissented from. JOGI AHIR *v.* BISHEN DAYAL SINGH . . . I. L. R., 18 Calc., 83

Reviews of judgment of a Small Cause Court as distinguished from new trials are now governed by s. 623 of the Civil Procedure Code, 1882.

334.——— *Provincial Small Cause Courts Act (IX of 1887), s. 17—Deposit of costs—Civil Procedure Code, 1882, ss. 623 and 624*

SMALL CAUSE COURT, MOFUSSIL —*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

cases of *Karoo Singh* v. *Deo Narain Singh, I. L. R., 10 Calc., 80,* and *Fazal Biswas* v. *Jemadar*

(c) REFERENCE TO HIGH COURT.

held could not be referred.

See SUROOP CHUNDER PATRE *v.* JADOO MOYTEE [5 W. R., S. C. C. Ref., 7

ANAND CHANDRA MAZUMDAR *v.* GOBARDHAN KHAN . . B. L. R., Sup. Vol., 457 [5 W. R., S. C. C. Ref., 19

KAMINEE SOONDUREE CHOWDHRAIN *v.* MUDHOO SOODUN MOOKERJEE . . 21 W. R., 376

BANK OF BENGAL *v.* CURRIE [3 B. L. R., 396 : 12 W. R., 432

As to what is to be referred—

See GUJENDRO MOHUN SHAHA *v.* EASTERN BENGAL RAILWAY COMPANY . . 18 W. R., 145

and how the reference is to be made—

DINONATH ADDY *v.* WELLER . 7 W. R., 16

335. ——— Ground for reference—*Application of parties.*—A Small Cause Court should not make a reference on a simple point merely on the application of the parties, unless it entertains a doubt upon the question. HURISH CHUNDER TALAPUTTUR *v.* O'BRIEN . . 14 W. R., 248

336. ——— Questions arising on ap-

SMALL CAUSE COURT, MOFUSSIL —*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

Act XI of 1865, s. 22. An application for a new trial is a point in the proceedings previous to the hearing. ISAN CHANDRA SING *v.* HARAN SIRDAR [3 B. L. R., A. C., 135 : 11 W. R., 525

337. ——————— *Act XI of 1865.* —A point arising upon the application for a new trial may be referred to the High Court. NOBO COOMAR CHUCKERBUTTY *v.* KOYLASH CHUNDER BAROOREE . . . . 17 W. R., 518

338. ——— Change of Judges pending reference—*Second reference by successor of Judge in case already decided.*—Where a case was determined by a former Judge of a Small Cause Court,

a Judge who had succeeded to the Judge who referred the case to interfere in the matter. UMANUND ROY *v.* BROWNE . . . . 7 W. R., 352

(d) MISCELLANEOUS CASES.

339. ——— Act XI of 1865, s. 45 and s. 20—*Power of clerk of Small Cause Court.*—A clerk of Small Cause Court is not authorized to sign the copy of the judgment and certificate alluded to in s. 20, Act XI of 1865. ANONYMOUS [3 W. R., S. C. C. Ref., 7

340. ——————— s. 51—*Powers of local Legislature—Judges of Small Cause Courts*—*Held* that in permanently investing, under s. 51

341. ——————— *Execution of decrees of Small Cause Courts against immoveable property—Powers of Judge of Small Cause Court.*—The Judge of a Court of Small Causes, who has been duly invested with the powers of a Subordinate Judge under the provisions of s 51 of Act XI of 1865, has "general jurisdiction" within the meaning of s 20 of that Act, and can consequently, under the provisions of that section, enforce a decree under that Act against the immoveable property of the judgment debtor. GOPAL *v.* NANKU [I. L. R., 1 All., 624

342 ——————— *Power to invest Small Cause Court Judge with powers of Principal*

SMALL CAUSE COURT, MOFUSSIL —*concluded.*

3 PRACTICE AND PROCEDURE—*concluded.*

Sudder Ameen.—S. 51, Act XI of 1865, did not authorize the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sudder Ameen. The section only contemplated an occasional investment of the powers, and one contingent on the state of the business of the Court. BIJEE KOOER *v.* DAMODUR DASS . . . . . . 5 N. W., 55

343. ——— Power to invest Small Cause Courts with insolvency jurisdiction —*Civil Procedure Code, 1877, s. 5—Ch XX, ss 344—356.*—The effect of s. 6 of the Code of Civil Proce-

chapter, to adjudicate in insolvency matters, was *ultra vires* and invalid. LALLU GANESH *v.* RANCHHOD KAHANDAS . . . I. L. R., 2 Bom., 641

344. ——— Presentation of plaint—*Former order returning plaint—Provincial Small Cause Courts Act (IX of 1887), ss. 23 and 27.*—

HAUSAMBHAI ABDULABHAI [I. L. R., 20 Bom., 283

SMALL CAUSE COURT, PRESIDENCY TOWNS.

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

See CLAIM TO ATTACHED PROPERTY.
[I. L. R, 18 Calc., 296
I. L. R., 26 Calc., 778
4 C. W. N., 470

See HABEAS CORPUS, WRIT OF.
[I. L. R., 1 Calc., 78

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622.
[I L. R., 13 Bom., 642

Bombay.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC
[I. L. R., 1 Bom., 82

See PLEADER — APPOINTMENT AND APPEARANCE . I. L. R, 8 Bom., 105

———— Calcutta.

See PLEADER — APPOINTMENT AND APPEARANCE . . 1 B. L. R., A. C., 45
[2 Ind. Jur., N. S., 133 : 7 W. R., 228

———— Madras.

See HINDU LAW—CONTRACT—ASSIGNMENT OF CONTRACT . . 4 Mad., 176
[1 Mad., 150

————Execution of decree of—

See BAILMENT . 5 B. L. R., Ap., 31

———— Jurisdiction of—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON.
[8 B. L. R., Ap., 10

———— Law of—

See CONTRACT ACT, s. 27.
[14 B. L. R., 76

———— Practice and procedure of—

See CIVIL PROCEDURE CODE, s 108.
[I. L. R., 21 Calc., 269
I. L. R., 20 Bom., 380

———— Reference to High Court from—

See LETTERS PATENT, HIGH COURT, CL. 10.
[8 B. L. R., 418

———— Suit on decree of—

See RIGHT OF SUIT—DECREES.
[I Ind. Jur., N. S., 220
I. L. R., 2 Calc., 434
10 B. L. R., Ap., 35
I. L. R., 5 Calc., 294
I. L. R, 6 Bom., 7, 292
9 W. R., 399
I. L. R., 8 Bom., 1

———— Summons book of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS — SMALL CAUSE COURT, PROCEEDINGS IN
[6 B. L. R., 729, 730 note
7 B. L. R., Ap., 61

1. JURISDICTION.

(*a*) GENERAL CASES.

1. ———— Extension of jurisdiction by Act XV of 1882—*Act IX of 1850, s 53—Abandonment of excess*—Whilst the pecuniary jurisdiction of the Small Cause Court was limited to

in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for. SIMSON *v.* GORA CHAND DOSS
[I. L. R., 9 Calc., 473

2. ———— Adding sum to legal claim

Sikhur Chund v. *Sooringmull, 1 Hyde, 272,* distinguished. BONOMALLY NAWN *v.* CAMPBELL
[10 B. L. R., 193 : 19 W. R., 20

3. ———— Abandonment of excess—*Claim not within pecuniary limits of jurisdiction.*—The Court has no jurisdiction to hear a case unless there be an abandonment of any excess above its pecuniary jurisdiction. GORACHUND CHUNDER BOSE *v.* CHARROO CHUNDER GHOSE
[Bourke, O. C., 3; Cor., 93

4. ———— Leave to sue — *Presidency Towns Small Cause Courts Act (XV of 1882), s. 18—Discretion, Exercise of—Refusal of leave to sue — Jurisdiction — Defendant residing outside jurisdiction.*—A tradesman in business in Calcutta sued his debtor, a resident at Lucknow, to recover a sum of R23 for goods sold in Calcutta and

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

forwarded by the E I. Ry. Co, for delivery at Lucknow. The plaintiff applied under s 18 of Act XV of 1882 for leave to sue the defendant in the Calcutta Court of Small Causes. The Court refused to grant such leave, apparently on the ground that the defendant was living at a long distance from Calcutta, and that the suit was one for a small amount *Held* that, in refusing to grant such leave, the Judge of the Small Cause Court had not exercised the discretion vested in him under s. 18, and that the case was one in which the leave applied for should have been granted IN THE MATTER OF COLLETT v. ARMSTRONG . I. L. R., 14 Calc., 526

5. — — Non-resident foreigner carrying on business by his munim in Bombay—*Presidency Towns Small Cause Courts Act (XV of 1882), s 18*—Where a foreigner who did not reside in Bombay carried on business there by his munim,—*Held* that, under s 18 (1) of the Small Cause Courts Act (XV of 1882), the Small Cause Court in Bombay had jurisdiction to try a suit brought against him in that Court. *Per* SARGENT, C.J—*Primâ facie* the word "defendants" in cl (*b*) of s 18 has the same meaning

not include them among the defendants over whom the clause gives jurisdiction on the ground that they are "carrying on business" within the limits Although it is true that a non-British subject who does not personally carry on business within the territorial limits of the Court does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India, from which business he expects to derive profit, he accepts the protection of the territorial

6. — — Splitting claim—*Omission to abandon excess—Act IX of 1850, s 34*—*Held* under s 34 of Act IX of 1850 that an abandonment of excess not stated in the summons is a splitting of the claim, and the Court has no jurisdiction to amend its record where there is no abandonment so stated GORACHUND CHUNDER BOSE v. CHABROO CHUNDER GHOSE Bourke, O. C., 3: Cor., 93

7. — — Splitting cause of action—*Act IX of 1850, s 31*—The defendant, as broker for the plaintiffs, guaranteed all transactions entered into by the plaintiffs with native firms through the defendant. Some of these native firms, in respect of such transactions, became indebted to the plaintiffs, and the defendant wrote to the plaintiffs requesting them to sue such defaulting firms The

Court, to

in one of

the plain

of action

Small Ca

WELL & Co v. SUMAR AHMED 6 Bom., O. C., 88

See CHOCKALINGA PILLAI v. VIRUTHALAM [4 Mad., 334

8 — *Act IX of 1850, s. 34*—*Tradesman's account*—A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a Small Cause Court in the Presidency towns CASSUM JOOMA v. THUCKER LILADHUR KISSOWJI I. L. R., 2 Bom., 570

9. — — Valuation of suit—*Suit for damages under R1,000, on contract of more than*

BABA MUDALI . . 3 Mad., 170

10. — *Act IX of 1850, s 27*—*Liquidated damages*—*Earnest-money.*—Where a contract for the sale and delivery of 2,000 baras of stone contained a provision that in case of

money and sue for the whole amount of the liquidated damages, but that his proper course was to sue for the difference only, which suit could properly be brought in the Small Cause Court, being R1,000 only. MEHERVANJI MANCHARJI v PUNJA VELJI . . . 5 Bom., O. C., 147

11 — — *Set-off*—*Deduction of amount of proceeds of goods not accepted.*—The plaintiffs consigned goods to the defendant, and drew a bill for R2,711 9-6 against them on the defendant in favour of the Chartered Mercantile

having refused to pay the bill) were sold by the plaintiffs, after notice to the defendant, at his risk, and realized R1,655 15-4. The plaintiff refused to hold a survey on the goods unless the defendant paid the amount of the acceptance. The plaintiffs

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

sued the defendant in the Small Cause Court for

set off. SHORTT *v.* ABDUL RAHIMAN
[6 Bom., O. C., 53

12. ——————— *Part payment—Set-off—Suit for balance of account.*—The plaintiffs

Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of R1,000 The defendant disputed the cor-

stated, struck the case out of the list for want of jurisdiction. *Held* that, as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the

Causes EWART, LATHAM & CO *v.* MUHAMMAD SIDDIK . . . . 4 Bom., O. C., 133

(*b*) ARMY ACT.

13. ——————— Stat. 44 & 45 Vict., c. 58, ss. 148, 151—*Act XV of 1882, s 18—Leave to sue.*—The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 & 45 Vict, c. 58, s 151. WALLIS *v* TAYLOR
[I. L. R., 13 Calc., 37

14. ——————— *Presidency Towns Small Cause Courts Act (XV of 1882)—Army Act, 1881 (44 & 45 Vict, c. 58), s. 151—*

15. ——————— *Presidency Towns Small Cause Courts Act (XV of 1882), cl. 2, ss. 1, 18—Army Act, 44 & 45 Vict., c. 58, sub-s. 1, s 151—51 Vict., c 4, s 7.*—The words of s. 7 of 51 Vict., c 4, amending sub s. 1 of s. 151 of 44 & 45 Vict., c 58, are meant to restrict the words 'within the jurisdiction, etc." (found in sub-s. 1 of s. 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by s 18 of Act XV of 1882. WALLIS & CO. *v.* BAILEY
[I. L. R., 18 Calc., 372

(*c*) DAMAGES FOR BREACH OF CONTRACT.

16. ——————— Contract for shipment and delivery of goods—*Divisible contracts—Construction of contract—Separate suits*—Where a contract provided for delivery of goods in two monthly shipments and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; and it appeared that the total amount of the damages sustained by reason of the two breaches alleged, if added together, exceeded R2,000, whereas, if taken separately, they were less than that amount,—*Held* that on the true construction of the contract the plaintiff was entitled to bring two separate suits for the damages sustained in respect of each shipment, and that therefore the Presidency Small Cause Court had jurisdiction VOLKART *v.* SABJU SAHEB
[I. L. R., 19 Mad., 304

(*d*) DECREE, SUIT ON.

17 ——————— Suit on decree of Small Cause Court—*Presidency Small Cause Courts Act,*

in the

July

ment.

(*e*) IMMOVEABLE PROPERTY.

18. ——————— Question of title—*Act IX of 1850, s. 91 (Act XV of 1882, s. 41)—Summons to show cause on what title occupier holds, without leave of owner.*—Upon a summons issued under section 91 of Act IX of 1850 by the Judge of the Small Cause Court to the occupier of a house to show by what title he claims to hold or occupy the same or part thereof,—*Held* that the jurisdiction

leave of the owner, comprised a case where the original possession was with leave of the owner, but was afterwards withdrawn by his vendee, the subsequent owner. DADABHAI HUSSANJI *v.* KUVARBAI . . . . . . 10 Bom., 386

19. ——————— *Act IX of 1850, ss. 91-93—Difficult or doubtful question of title.*—

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

s. 93 of Act IX of 1850. MUHAMMED ESUP SAHIB v. GEORGE . . . I. L. R., 4 Mad., 385

Mere assertion of a title to possession is not sufficient. MUHAMMED ESUP SAHIB v. GEORGE [I. L. R., 4 Mad., 385

ANONYMOUS . I. L. R., 4 Mad., 389 note

20. ——— *Title to immoveable property—Act IX of 1850, ss. 25, 91—Act XXVI of 1864, s. 2—Practice—Leave to amend summons and plaint.*—In a suit brought under s. 91 of Act IX of 1850, the Bombay Court of Small Causes had [illegible]

[illegible] of Act [illegible] and the value of the pro- [illegible]

with a claim under s 25 of Act XXVI of 1864 if the summons were issued in the mistaken form by the fault of the Clerk of the Court, and not of the plaintiff. NOWLA OOMA v. BALA DHURMAJI [I. L. R., 2 Bom., 91

21. ——— *Act IX of 1850, s. 91—Equitable defence—Suit for ejectment.*—The plaintiff in 1879 took out a summons under s. 91 of the Presidency Towns Small Causes Courts Act, IX of 1850, calling on his nephew the defendant to deliver up possession of certain premises in his [illegible] laintiff [illegible] ques- [illegible] endant [illegible] f sale. The plaintiff produced the deed of mortgage to *N* and the conveyance to himself. It was admitted on his behalf that he had never received any rent from the defendant, and never had manual possession of the premises occupied by him. But the plaintiff produced a writing of attornment, dated April 1873, passed to him by the defendant, whereby the latter acknowledged that he was occupying the premises in question as the plaintiff's tenant, and agreed to pay rent for the same at R25 a month. His [illegible]

money had passed between the parties, that the defendant had never been out of possession, and that the plaintiff now required the Court to assist him in turning his own wrong to his own advantage. At [illegible]

[illegible] Court, *Held* that the defendant was entitled to set up the defence which he had, and that it ousted the jurisdiction of the Court of Small Causes to proceed further with the action—inasmuch as such defence raised a question of adverse title, which, in suits under s 91 of Act IX, 1850, that Court had not jurisdiction to decide. LUCKMIDAS KHIMJI v. MULJI CANJI . . . I. L. R., 5 Bom., 295

22 ——— *Act XV of 1882.* [illegible]

1882. The defendant admitted the tenancy, but contended that he held under an unexpired lease for [illegible]

jurisdiction of the Small Cause Court. DAVIDAS HARJIVANDAS v. TYABALLY ABDULALLY [I. L. R., 10 Bom., 30

23. ——— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 22 and 41—Landlord and tenant—Suit to eject tenant—Tender and payment into Court—Transfer of Property Act (IV of 1882), s. 114—Costs.*—The plaintiff, a landlord, relying on a provision in a lease, gave the defendants, his tenants, notice to quit. Within seven days the defendants tendered rent, interest, and costs. The plaintiff, nevertheless, filed this suit to eject the defendants. The defendants subsequently paid the full amount due into Courts. *Held* that, under the terms of the lease, the defendants were not liable to forfeiture, and that, since the suit should have been brought under Ch. VII, s. 41, of the Presidency Small Cause Courts Act, the plaintiff must pay the defendants' costs as between attorney and client under s 22 of that Act. *Held* on appeal (1) that there, having been a tender and payment into Court of the full amount due, the plaintiff proceeded with the suit at his risk under s 114 of the Transfer of Property Act, (2) that the [illegible]

24. ——— **Trespass to immoveable property**—*Act XV of 1882, ss. 18, 19, 38, 45.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession, the defendant contended that such a suit was one for the determination of a right to, or interest in, immoveable property, and was therefore not maintainable in the Small Cause Court. *Held* the Court had jurisdiction to

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

entertain such a suit PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY

[I. L. R., 11 Calc., 261

(*f*) INSOLVENCY.

25 ——— Madras Small Cause Court —*Civil Procedure Code (Act XIV of 1882), ss 8-3 —Presidency Small Cause Courts, Act (XV of 1882), ss. 2, 23* —The Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of s. 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the Presidency Small

diction in insolvency being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1882 came into force. IN RE WALLER

[I. L. R., 6 Mad., 430

(*g*) LEGACY, SUIT FOR

26. ——— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 19—Suit for legacy—Equitable jurisdiction.*—A suit to recover a legacy brought in the Small Cause Court in which there is no allegation that the executors were in possession of sufficient assets to pay the legacy or that they had ever assented to the

(*h*) MAINTENANCE, SUIT FOR.

27. ——— Presidency Small Cause Courts Act (XV of 1882), s. 18.—Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree. POKALA *v.* MURUGAPPA

[I. L. R., 10 Mad., 114

(*i*) MOVEABLE PROPERTY.

28. ——— Tiled huts—*Act IX of 1850, ss 58, 89 —Goods and chattels.*—Tiled huts were not

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

29. ——— Fixtures—*Act IX of 1850, s 85—Seizure of goods and chattels in execution of decree—Engine in flour-mill—Landlord and tenant.* —In a suit for damages for the removal of oil and flour mills and a steam-engine and boiler seized in execution of a decree of the Calcutta Small Cause Court,—*Held* that such things were fixtures, and not goods and chattels, within the meaning of s. 58 of Act IX of 1850, and therefore could not be seized in execution. The question whether fixtures are remove-

30. ——— Presidency Towns Small Cause Courts Act (XV of 1882), s. 28—*Presidency Small Cause Court Rules of Practice, 49, 50, 51—Tiled huts—"For the purposes of execution," Meaning of—Question of Title—Res*

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

the matter. DENO NATH BATABYAL *v.* ADHOR CHUNDER SETT . . . 4 C. W. N., 470

(*j*) REGISTRATION ACT, 1866, ss. 52, 53.

31. ——— **Petition and decree under Registration Act**—Small Cause Courts in the Presidency Towns had no jurisdiction to entertain petitions and make decrees under the provisions of ss. 52 and 53, Act XX of 1866. IN THE MATTER OF ACT XX OF 1866. IN THE MATTER OF NIL KAMAL BANERJEE *v.* MADHUSUDAN CHOWDHRY [6 B. L. R., 177

S. C. NIL COMUL BANERJEE *v.* MUDDOSOODUN CHOWDHRY . . . . 14 W. R., 478

(*k*) REVENUE.

32. ——— **Matter concerning revenue** —*Trespass by Collector—Action of Collector in preserving waste land—Act IX of 1850, s. 25*—The Collector of Bombay, *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff "for the purpose, the Collector stated in his evidence, of preserving the land for Government, as land from which revenue might in future be collected." In an action for trespass brought against him by the plaintiff, it was held that the act of the Collector was not "a matter concerning revenue" within the meaning of s. 25 of Act IX of 1850, and that the jurisdiction of the Small Cause Court was therefore not excluded. NARAYAN KRISHNA LAUD *v.* NORMAN . 5 Bom., O. C., 1

(*l*) SET-OFF.

33. ——— **Claims arising out of the same transaction**—*Presidency Small Cause Court—Jurisdiction—Equitable right of set-off*

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

equitable right of set off exists in this country when both the claim of the plaintiff and that of the defendant arise out of the same transaction, although the

defendant for any balance which might be found due to him. BROJENDRA NATH DAS *v.* BUDGE-BUDGE JUTE MILL CO. . I. L. R., 20 Calc., 527

34. ——— **"Admitted set-off"**—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 18, expl.—Civil Procedure Code (Act XIV of 1882), s. 111*—The plaintiffs sued in the Calcutta Court of Small Causes for breach of contract, the damages for which breach amounted to R2,148, but they deducted from this sum of R2,148, by way of set off, a sum of R500, which was due by them to the defendant on account of an entirely different transaction, thereby reducing their claim to R1,648. The defendant admitted that the R500 was due to him by the plaintiffs, but did not, either before suit or at the trial, agree to its being set off against the plaintiffs' claim. *Held* by MACPHERSON and TREVELYAN, *JJ.* (PETHERAM, *C.J.*, dissenting), that the sum of R500 could not, under expl. I of s. 18 of Act XV of 1882, be set off, and that the suit must be dismissed as being beyond the jurisdiction of the Court. RAMDEO *v.* POKHIRAM . . I. L. R., 21 Calc., 419

(*m*) TITLE, QUESTION OF.

35. ——— **Questions of title incidentally raised**—*Act XV of 1882, s. 19, cl. (g)—Suit for rent—"Suits for determination of any right or interest in immoveable property"*—When

defence, that determines whether or not the Court of Small Causes has jurisdiction. Cl. (*g*) of s. 19 of the Presidency Small Cause Courts Act (XV of 1882)

that the defence raised a *bonâ fide* question of title to immoveable property which ousted their jurisdiction. *Held*, reversing the lower Court's decision, that the suit was cognizable by the Court of Small Causes. BAPUJI RAGHUNATH *v.* KUVARJI EDULJI UMRIGAR . I. L. R., 15 Bom., 400

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued*.

1. JURISDICTION—*concluded*.

(*n*) TROVER.

36. ——— Action for detinue and trover—*Gift—Incomplete gift—Suit by executor to recover promissory notes on ground that the gift of them to defendant was incomplete—Presidency Towns Small Cause Courts Act (XV of 1882), s. 18*.—The plaintiff as executor of *D* sued the defendant in the Small Cause Court of Bombay to recover two Government promissory notes of the nominal value of R2,000, standing in the name of *D*. The defendant, who had been *D's* servant, alleged that the notes had been given to him by *D* as a reward for past services. The Court held that there was evidence (though unsatisfactory) of a gift by *D* to the defendant. It was then contended, on behalf of the plaintiff, that assuming there was evidence of a gift, such gift was incomplete, inasmuch as the notes had not been endorsed to the defendant, and that the defendant was not entitled to any aid from the Court to perfect the gift. The Judge held that the Court of Small Causes had no power to decree the return of the notes or payment of their value, and that, so far as the jurisdiction of that Court was concerned, the defendant had a right to retain the note. *Held* by the High Court that the Court of Small Causes had jurisdiction to entertain the plaintiff's claim, on the ground that there was an

PESTONJI COWASJI BUCHA

[I. L. R., 12 Bom., 573

2. PRACTICE AND PROCEDURE.

(*a*) GENERAL CASES.

The practice and procedure of the Presidency Small Cause Courts is so different now from what it was under the former Acts IX of 1850 and XXVI of 1864 that most of the cases decided under those Acts have become useless as precedents. The procedure is now governed by Act XV of 1882 by which a great portion of the Civil Procedure Code has been extended to these Courts.

37. ——— Dismissal of suit for want of jurisdiction—*Costs—Form of decree*.—Where

abates or is dismissed "for want of jurisdiction." In such a case the Court has power to award costs to the defendant. PREEK *v.* HARLEY

[I. L. R., 6 Calc., 418: 7 C. L. R., 237

38. ——— Power to restore case struck off for default in appearance—*Act IX of 1850, s. 42*.—A Court of Small Causes, constituted under Act IX of 1850, could, during the same day and at the same sitting of the Court, *ex-parte* restore

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued*.

2. PRACTICE AND PROCEDURE—*continued*.

a cause once struck out under s. 42, though the order for striking off may have been duly recorded. In such a case it would be open to the defendant to apply to set aside such *ex-parte* order, and the sufficiency of the grounds of the application would be a question for the discretion of the Judge. SHIB CHUNDER MULLICK *v.* KISSEN DYAL OPADHYA

[I. L. R., 1 Calc., 476

(*b*) LEAVE TO SUE.

39. ——— Practice as to granting leave to sue person out of jurisdiction—*Power of High Court to make rules as to Small Cause Court—Stat. 24 & 25 Vict., c. 104, s. 15—Civil Procedure Code (1882), s. 652—Presidency Towns Small Cause Courts Act (XV of 1882), ss. 6, 18, cls. (a) and (c), 33*.—In 1885 the High Court made a rule under the Presidency Small Cause Courts

SESHAYYA . . I. L. R., 18 Mad., 236

(*c*) NEW TRIAL

40. ——— Application for new trial

rule comes on for hearing. If on hearing both parties the Court thinks further inquiry necessary, it can, of course, make such inquiry in such manner as

41. ——— *Presidency Towns*

the judgment becomes final and conclusive, save as

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

provided by Ch. VI of Act XV of 1882. *Held,* therefore, that the Small Cause Court had jurisdiction to entertain the application by the plaintiff for a new trial. PROTAP CHUNDER SEN *v.* TUNSOOK DASS . . . I. L. R., 23 Calc., 967

42. ——— Ground for new trial—*Want of jurisdiction.*—A new trial may be granted on the ground of want of jurisdiction in the Court, though such ground was not formally raised or recorded at the original hearing. CHUNDEE CHURN DUTT *v.* EDULJEE COWASJEE BIJNEE

[I. L. R., 8 Calc., 678: 11 C. L. R., 225

43. ——— *Question of evidence—Power to reverse decree.*—Where the question is one of evidence, the judgment of the original Court can be reversed, and new trial directed only when such judgment is manifestly against the weight of evidence *Sadasook Gambir Chand v. Kannayya, I. L. R., 19 Mad., 96,* followed. SASSOON *v.* HURRY DAS BHUKUT

[I. L. R., 24 Calc., 455
1 C. W. N., 44

44. ——— *Presidency Towns*

Act, such jurisdiction being a revisional jurisdiction only. *Held* also that, where the question is one of evidence, the judgment of the original Court

45. ——— Difference of opinion between Judges as to allowing new trial.—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted. JARDINE, SKINNER & Co *v.* MONEY . . . . . 14 W. R., 312

46. ——— Application to set aside ex-parte decree—*Presidency Small Cause Courts Act (XV of 1882), s. 37—Ex-parte decree.*—S. 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex-parte* decree. An application to set aside an *ex-parte* decree passed by a Presidency Court of Small Causes falls within the terms of s. 108 of the Code of Civil Procedure. ROSHANLAL *v.* LACHMI NARAYAN

[I. L. R., 17 Bom., 507

47. ——— Power to reverse decree—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 37—Powers of Full Bench of Presidency*

application to the Full Bench under the Presidency Small Cause Courts Act, s 37, and the Court arrived at the conclusion that the judgment proceeded on a misappreciation of the evidence and reversed the decree *Held* by COLLINS, *C.J.*, and SHEPHARD, *J.* (BEST, *J.*, dissenting), that the Full Bench of the Presidency Small Cause Court had transgressed the limits of the jurisdiction conferred by Act XV of 1882, s 37, as the case was one on which different minds might not unreasonably have come to different conclusions SADASOOK GAMBIR CHAND *v.* KANNAYYA . . I. L. R., 19 Mad., 96

48. ——— Powers of Full Bench—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 37—Presidency Towns Small Cause Courts Amendment Act (I of 1895), s. 13—Appeal*—Act I of 1895, s. 13, does not empower the Full Bench of the Presidency Court of Small Causes to entertain appeals of questions of fact against the decree of one of the Judges of the Court. SRINIVASA CHARLU *v.* BALAJI RAU I. L. R., 21 Mad., 232

49. ——— Second new trial.—It is competent to the Judges of the Calcutta Small Cause Court to grant a second new trial of the same case. PURSON CHUND GOLACHA *v.* KAJOORAM

[10 B. L. R., 355: 19 W. R., 203

50. ——— *Second application for new trial—Presidency Towns Small Cause Courts Act (XV of 1882), s 37—Act IX of 1850, s 53.*—The Judges of the Calcutta Small Cause

R, 203, followed SURRUT COOMARI DASSEE *v.* RADHA MOHUN ROY . I. L. R, 22 Calc, 784

(*d*) REFERENCE TO HIGH COURT.

51. ——— Question of law—Only questions of law in suits can be referred. MOHUN SING *v.* KAREEM OONISSA BEGUM 8 Mad., 57

The point of law referred should be expressly stated JARDINE, SKINNER & Co. *v.* MONEY

[14 W. R., 312

52. ——— *Question of fact—Act XXVI of 1864, s. 7—Act IX of 1850, s 55.*—The question whether or not cotton fabrics bordered

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state wrought up or not wrought up with other materials," within the meaning of s. 10, Act XVIII of 1854, was a question of fact to be decided on the evidence, and not a question of law to be referred for the opinion of the High Court under Act IX of 1850, s. 55, and Act XXVI of 1864, s. 7. LAKHMIDAS HIRACHAND *v.* G. I. P. RAILWAY COMPANY . . . . 4 Bom., O. C., 129

53. ——— Order rejecting application for new trial—*Judgment contingent on opinion*

JOAKIM . . . . . . 12 B. L. R., 34

See also MACKINTOSH *v.* GILL [12 B. L. R., 37: 20 W. R., 358

54. ——— ——— *Act XV of 1882, s. 69—Reference to High Court, Question for—*

points of difference between the Judges at that stage form matter for reference NUSSERWANJEE *v.* PURSOTUM DASS . . I. L. R., 4 Calc., 298

Under the Acts of 1850 and 1864, the Judge in referring a point was bound to make his judgment contingent on the opinion of the High Court.

See DOSABHAI KAVASJI *v.* KHERDADJI HORMASJI [7 Bom., O. C., 180

But now under the Act of 1882, s. 69, he can either give judgment contingent on the opinion of the High Court or reserve his judgment.

56. ——— ——— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 37, 69—Application to Full Bench for new trial.*—The Full Bench of a Presidency Court of Small Causes cannot state a case for the opinion of the High Court on the hearing of an application for a new trial made under Act XV of 1882, s. 37, such hearing not being the "hearing of a suit" within the meaning of s. 69 of that Act. OAKSHOTT *v.* BRITISH INDIA STEAM NAVIGATION COMPANY [I. L. R., 15 Mad., 179

57. ——— ——— *Presidency Small Cause Courts Act (XV of 1882), s. 69—Case stated for opinions of High Court—Mode of stating case—Question of law or usage.*—In a suit brought in the Small Cause Court by the plaintiffs against the defendant for damages for breach of

for the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), unless the decree were in his favour. The Judge thereupon desired him to state the exact question of law he would wish to be referred, but he declared himself unable to do so until after judgment was delivered. He said he could not then say anything more than that he would require a case to be stated

in proper form, no question of law or usage having the force of law having been formulated for the

58. ——— ——— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 69—Duty of the Judge in stating a case for opinion of the High Court—Question of law—Condition precedent to referring case.*—Under s. 69 of the Presidency Small Cause Courts Act (XV of 1882),

59. ——— ——— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 69—Requisition for reference, Time for making.*—A party requiring a Judge of the Small Causes Court to make a reference to the High Court under

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

60. ———— *Judgment contingent upon opinion of the High Court—Presidency Small Cause Courts Act (XV of 1882), s. 69—Civil Procedure Code (1882), ss. 373, 617, 618,*

the High Court, was bound to enter judgment for the defendants YULE & CO. v. MAHOMED HOSSAIN . . . I. L. R., 24 Calc., 129

61. ———— Defect in reference—*No question of law referred—Presidency Small Cause Courts Act (XV of 1882), s. 69*—A reference can only be made under s. 69 of Act XV of 1882 for the

of the High Court is sought. *Quære*—Whether s. 617 of the Code of Civil Procedure is to be read as incorporated with s. 69 of the Presidency Small Cause Courts Act. BENODE LALL ROY v. RIVER STEAM NAVIGATION COMPANY . 1 C. W. N., 143

being too late, the High Court, on the sum being deposited, and it appearing that the defendant would not be prejudiced by such a course, allowed the case to be heard. FORNARO v. RAMNARAIN SOOKDEB [14 B. L. R., 180: 23 W. R., 136

63. ———— *Act XXVI of 1864, s. 8—Omission to deposit costs—Non-appearance*—Where a case had been referred from the

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith. DISSENT v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA [5 B. L. R., Ap., 24: 20 W. R., 349 note

These cases were under the old procedure. Under Act XV of 1882, if security is not deposited, the party against whom the contingent judgment has been given is to be taken to have submitted to it.

64. ———— Case referred at request of party—*Non-appearance of such party before High Court—Costs.*—When a case is referred by the Small Cause Court, for the opinion of the High Court, at

reference. WILLIAMSON v. ARAB ISMAIL KHAN [11 B. L. R., 415: 20 W. R., 349

65. ———— Costs of reference to High Court—

the discretion of the Court, and need not necessarily follow the event of the suit. NICOL v. MATHOORA DASS DUMANI [I. L. R., 15 Calc., 507

(e) RE-HEARING.

66. ———— Re-hearing, Application for—*Practice—Presidency Small Cause Courts Act (XV of 1882), ss. 38 and 71—Compliance with*

was instructed to apply to the High Court under s. 38 of Act XV of 1882 for re-hearing of the suit.

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

he occupied when the application was made. IN RE JAIKISSONDAS PURSHOTAMDAS [I. L. R., 12 Bom., 408

67. ———— *Presidency Small Cause Courts Act, s. 38—Case in which order for re-hearing granted on ground that decision*

arrived at by the Small Cause Court is a wrong one. The section requires that there should be such an opinion before granting the order, and such opinion

68. ———— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 38, 71—Stamp—Petition insufficiently stamped—Deficiency of stamp, Power to make good, after period of limitation allowed for presentation of application.*—On the 7th April, being the last day on which such application could be made under the provisions of s 38 of the Presidency Small Cause Courts Act, an application was made to the High Court under that section for the re-hearing of a suit

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

and that he was entitled to have the application heard. *Held* that this could not be done. The eight

could be received. NORENDRANATH BOSE *v.* ABINASH CHUNDER ROY . . I. L. R., 18 Calc., 445

69. ———— *Miscarriage or failure of justice—Withdrawal before judgment of request to refer case for the opinion of the High Court.*—In a suit in the Court of Small Causes, in

failure of justice" within the meaning of s 38, and that the plaintiffs were not entitled to re-hearing. VASSONJI TRICUMJI & CO *v* SOUTHERN MARATHA RAILWAY COMPANY . . I. L. R., 17 Bom., 14

70. ———— *Presidency Small Cause Courts Act (XV of 1882), s. 38—Dismissal for default—Remedy of plaintiff—Civil Procedure Code (1882), ss. 100, 102, 103—Appearance and non-appearance of parties—Appearance by counsel or pleader to obtain adjournment*—S. 38 of the Presidency Small Cause Courts Act (XV of 1882) does not preclude a plaintiff whose suit has been dismissed for default from applying under s 103 of the Civil Procedure Code (Act XIV of 1882) to have the order of dismissal set aside. There is no inconsistency between the two sections. A plaintiff whose suit has been dismissed for default has two separate remedies under different enactments If he chooses to apply for a new trial under s 38, he must do so within eight days. If he professes to apply for an order setting aside the dismissal under s 103 of the Civil Procedure Code, he can do so within thirty days (Limitation Act XV of 1877, sch. II, art. 163). A suit and cross-suit between the same parties were on the board of a Judge of the Presi-

then in Court. *B* was unable to state what was the defence, if any, to the claim of the plaintiffs in the first suit. The adjournment was refused, and

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concluded.*

2. PRACTICE AND PROCEDURE—*concluded.*

B said he withdrew from the case. Both suits were then and there disposed of, the claim of the

as *ex-parte* decrees, granted a rule for a new trial, which was made absolute. On appeal to the Full Court, the matter was referred to the High Court. *Held* that under the circumstances the suits were to be considered as having been disposed of under ss. 100 and 102 of the Civil Procedure Code (Act XIV of 1852) respectively, and that, whether or not they, or

SMALL CAUSE COURT, RANGOON.

1. ——— Establishment of—*Act XXI*

ment in such part," enacted by s. 3 that the Local Government may, with the previous sanction of the Governor General in Council, constitute Courts of Small Causes under that Act at any place within the territories under such Government. By s. 3 the Judge of such Small Cause Court was to be appointed by the Local Government. Act XI of 1865 did not repeal s. 10 of Act XXI of 1863. By notification dated 1st September 1869 the Governor General appointed a Judge of the Small Cause Court at

of 2nd October 1869 the Governor General in Council sanctioned the establishment of a Court of Small Causes in Rangoon under s. 3, Act XI of 1865, extended the jurisdiction of the said Court to

missioner. KO SHOAY DOON *v.* SHOAY GAN

[6 B. L. R., 193: 14 W. R., 331

2. ——— Jurisdiction of—*Foreign ship—Suit by sailor for wages—Mofussil Small Cause*

SMALL CAUSE COURT, RANGOON—*concluded.*

ship, who was at the time loading or unloading his vessel within the local limits of the Small Cause Court of Rangoon, was sued by one of his sailors (who had contracted to serve on a voyage from Bremerhaven to East India) for wages in the Small Cause Court of Rangoon. *Held* that the sailor's cause of action arose within the local limits of the Small Cause Court where the defendant was residing when the suit was brought, and that therefore the Small Cause Court had jurisdiction to hear the suit. OLNER *v.* LAVEZZO

[I. L. R., 10 Calc., 878

SMUGGLING

See STOLEN PROPERTY—OFFENCES RELATING TO . . 18 W. R., Cr., 83
[19 W. R., Cr., 37

SNAKE-CHARMERS.

——— Death caused by—

See MURDER.
[3 B. L. R., A. Cr., 25: 12 W. R., Cr., 7
I. L. R., 5 Calc., 351: 4 C. L. R., 580

SOLDIER.

See CANTONMENTS ACT (III OF 1880), s. 14 . . I. L. R., 3 All., 214

——— Residence of—

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN
[I. L. R., 1 All., 51

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
[5 W. R., S. C. C. Ref., 21
6 Mad., 83

——— Army Act, 1881, s. 144—*Sub-Conductor, Ordnance Department—Service of summons—Civil Procedure Code, s. 463.*—A Sub Conduc-

been sent by the Court to the Commissary of Ordnance to be served on the defendant, his subordinate, the Commissary of Ordnance returned the summons unserved and referred to s. 144 of the Army Act, 1881, and his reason for such action.

[I. L. R., 11 Mad., 475

SOLICITOR.

See Cases under Attorney.

See Cases under Attorney and Client.

See Privileged Communication.

——— **Duty of**—*Attorney and client.*—It is the duty of a solicitor who has once undertaken a cause to carry it to a conclusion. In re a Solicitor . . . . **4 B. L. R., P. C., 29**

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal, had abstained from carrying that order to its proper termination. It was intimated subsequently that it

——— **Lien of, for costs.**

See Costs—Costs out of Estate.
[I. L. R., 10 Bom., 248

SOLITARY CONFINEMENT.

See Sentence—Solitary Confinement
[3 B. L. R., A. Cr., 49
I. L. R., 6 All., 83

SOMAJ.

——— **Breach of agreement to join—**

See Contract Act, s. 23—Illegal Contracts—Generally.
[2 B. L. R., S. N., 4

——— **Exclusion from—**

See Jurisdiction of Civil Court—Societies . **3 B. L. R., A. C., 91**

SONTHAL PERGUNNAHS.

See Settlement Officer.
[6 C. L. R., 555

See Transfer of Criminal Case—General Cases . **I. L. R., 18 Calc., 247**

——— **Appeals in cases from—**

See Appeal—Regulations—Bengal Regulation III of 1872.
[6 C. L. R., 555

See Appeal in Criminal Cases—Acts—Act XXXVII of 1855 . **17 W. R., 11**
[I. L. R., 12 Calc., 536

See High Court, Jurisdiction of—Calcutta—Civil.
[I. L. R., 3 Calc., 298
I. L. R., 10 Calc., 761

——— **Trial of suit for land in—**

See Jurisdiction—Suits for Land—Property in different Districts.
[I. L. R., 4 Calc., 222

See Subordinate Judge, Jurisdiction of . . . . **5 C. L. R., 128**

SONTHAL PERGUNNAHS JUSTICE REGULATION (V OF 1893).

——— **s. 24.**

See Sonthal Pergunnahs Settlement Regulation, s. 6.
[I. L. R., 26 Calc., 238

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872).

——— **ss 3, 4**—*Act XXXVII of 1855, s. 2—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887)—Suit exceeding R1,000 in value—Officer invested with power of a Civil Court—" Court."*—The effect of s. 2 of Act XXXVII of 1855 and s. 3 of Regulation III of 1872 is to make the general

Dungaram Marwary *v* Rajkishore Deo
[I. L. R., 18 Calc., 133

1. ——— **s. 5**—*Jurisdiction of Civil Court*

certain land, and came before the Subordinate Judge, by whom they were treated as a regular suit. The decision was not pronounced until the settlement had

further, that the proceedings were not necessarily irregular by reason of the fact that issues had not been framed under s. 5 of the Regulation. Sonamoni Dasi *v* Lilanund Singh . . **11 C. L R., 30**

2. ——— *Appeal from settlement proceedings—Notification of the Lieutenant-Governor*

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872)
—continued.

in conformity with his findings, 'he being thoroughly conversant with all the facts of the case,

High Court had no jurisdiction to hear the appeal. TARINI PERSHAD MISRA v MAHAMUD CHOWDHRY [I. L. R., 7 Calc, 376

S. C. TARINI PROSAD MISSER v. HURRISH CHUNDER CHOWDHRY . . . 8 C. L R, 548

——— s. 6 as amended by s. 24,

MARWARI . . . I. L. R., 20 Calc., [illegible]

1. ——— ss 11, 25—*Suit regarding matter decided by Settlement Court—Settlement officer, Finding of—Jurisdiction of Civil Court—Right of*

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872)
—continued.

involves also the determination of "the rights of zamindars or other proprietors as between themselves." RAM CHURN SING v. DHATURI SING [I. L. R., 18 Calc., 146

2. ——— *"Proprietor," Meaning of—Suit for establishment of lakhiraj title and amendment of record-of-rights—Jurisdiction of Civil Court—Onus of proof.*—In proceedings for settlement of rent and record of rights under the Sonthal Pergunnahs Settlement Regulation (III of 1872), certain lands claimed by the plaintiffs as

Singh v. Dhaturi Singh, I. L. R., 18 Calc, 146, distinguished. *Held* also that in the present case the onus was on the plaintiffs to prove their alleged lakhiraj title. RAMRANJAN CHUCKERBUTTY v. NANDA LAL LAIK . . I. L. R., 22 Calc, 473

1. ——— ss. 24, 25—*Suit to set aside order of settlement officer—Non-publication of record-of-rights*—Where, in December 1884, a suit was

2. ——— *Suit to set aside order of settlement officer—Non-publication of record-of-*

the lands as chakran and that the services for which he held them had ceased, the defendant pleaded that the tenure was dur-mokurari, that the lands had been

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872) —*concluded.*

behalf of the defendant that such publication was not essential, but that it was open to the settlement officer to publish the record in such manner as might be convenient. *Held* that posting the record conspicuously in the village is an essential part of the publication, and that the suit was not barred by limitation It was further contended that the onus of proving the tenure to be dur mokurari, which had

SOVEREIGN PRINCE.

——— Suit against—

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES [I. L. R., 15 Mad., 494

SPECIAL OR SECOND APPEAL.

SPECIAL OR SECOND APPEAL —*continued.*

See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT.

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See CASES UNDER BENGAL RENT ACT, 1869, s. 102

See PRIVY COUNCIL, PRACTICE OF—QUESTIONS OF FACT. [I. L. R., 16 Calc., 753 L. R., 16 I. A., 125

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL [12 B. L. R., 107

See REVIEW—ORDERS SUBJECT TO REVIEW. [10 B. L. R., 155, 156 note

SPECIAL OR SECOND APPEAL
—continued.

See REVIEW—POWER TO REVIEW.
[9 W. R., 471
11 W. R., 511
6 B. L. R., 333, 334 note

1. ORDERS SUBJECT OR NOT TO APPEAL.

1. ——— Law applicable to special appeals—*Civil Procedure Code, 1877, ss. 584, 591*—Second appeals to the High Court must either come within Ch. XLII or ss. 583 and 591 of Act X of 1877 HIRDHAMUN JHA *v.* JINGHOOR JHA
I. L. R., 5 Calc., 711

2. ——— Order improperly adding plaintiffs to suit—*Civil Procedure Code, 1882, s. 591.*—An appeal lies, under s 591 of the Civil Procedure Code, from an order improperly adding a person as a plaintiff in a suit. GOOGLEE SAHOO *v.* PREMLAL SAHOO . I. L. R., 7 Calc., 148

3. Order for attachment for contempt—*Civil Procedure Code, 1882, s. 591.*—An order for attachment for contempt is not an order in the exercise of the High Court's civil jurisdiction, and therefore does not come within the provisions of s. 591 of the Civil Procedure Code. NAVIVAHOO *v.* NAROTAMDAS CANDAS . I. L. R., 7 Bom., 5

4. ——— Decision of Political Agent in a regular appeal—*Political Agent of Southern Maratha Country.*—A special appeal lies from the decision of the Political Agent of the Southern Maratha Country passed in regular appeal. NILOWA *v.* PAKIRAPPA . . . 6 Bom., A. C., 75

5. ——— Decision of the District Court on appeal from the Talukhdari Settlement Officer.—A decision of the District Court on appeal from the Talukhdari Settlement Officer is subject to second appeal to the High Court JAMSANG DEVABHAI *v* GOYABHAI KIKABHAI
I. L. R., 16 Bom., 408

6. ——— Order for penalty under Stamp Act—*Civil Procedure Code, 1877, s. 588—Act VIII of 1859, s 365*—A decision of a Judge directing a penalty to be enforced under the Stamp

7. ——— Order as to compensation for land—*Land Acquisition Act (X of 1870), ss. 15, 39*—*Dispute as to right to compensation*—Where a dispute as to the right of one of two claimants to certain compensation awarded under the provisions of the Land Acquisition Act has been referred to the

POORNA BAI
I. L. R., 9 Calc., 838: 12 C. L. R., 409

SPECIAL OR SECOND APPEAL
—continued.

1. ORDERS SUBJECT OR NOT TO APPEAL
—continued.

8. ——— Order directing plaint to be returned for presentation in proper Court

that a second appeal would lie. JOYNATH ROY *v.* LALL BAHADOOR SINGH
I. L. R., 8 Calc., 126: 10 C. L. R., 146

9. ——— Order as to execution of decree under R5,000, but with interest, etc, exceeding R5,000—*Second Class Subordinate Judge—Subject-matter of suit under R5,000 and*

the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court. *Held*

SHAMRAV PANDOJI *v* NILOJI RAMAJI
I. L. R., 10 Bom., 200

10. ——— Regular appeal heard ex-parte.—A special appeal lies from a regular appeal heard *ex-parte* TARA CHAND GHOSE *v* ANAND CHANDRA CHOWDHRY
2 B. L. R., A. C., 110: 10 W. R., 450

RAMSHET BIN BACHASHET *v.* BALKRISHNA BIN ABABHAT . . . . 6 Bom., A. C., 161

PARAN CHUNDER GHOSE *v.* CHUKKUN LALL ROY
20 W. R., 402

11. ——— Appeal from ex-parte decree—*Appeal improperly admitted.*—Where a decree is passed *ex-parte* in an original suit, the defendant has no right to a special appeal, even though his appeal has been entertained by the Civil Court. CHIDAMBARA PILLAI *v.* KAMAN
I Mad., 189

12. ——— Decree ex-parte.—A second appeal lies from an *ex-parte* decree of a lower Appellate Court. MARUTI *v.* VITHU
I. L. R., 16 Bom., 117

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL—*continued.*

13. ——— Order refusing to set aside

Judge. *Held* that the order of the District Judge was final under s. 588, and that no second appeal would lie, nor would the Court interfere under s. 622 of the Code. AUBINASH CHUNDER MOOKERJEE *v* MARTIN . . . . I. L. R., 8 Calc., 832

14. ——— Order of remand—*Order under s. 354, Civil Procedure Code, 1859.*—A special appeal did not lie from an order of remand under s. 354, Civil Procedure Code. COLLECTOR OF AGRA *v.* BULJEETA . . . . 3 Agra, 368 [Agra, F. B., Ed. 1874, 161

15. ——— Order on inquiry in case of obstruction in execution of decree—*Miscellaneous appeal—Civil Procedure Code, 1859, s. 229.*—Where an inquiry had been held under s 229, Code of Civil Procedure, and a regular appeal lay to the High Court under s. 231, a miscellaneous appeal could not be entertained. GOOROO DOSS ROY *v.* PUNCHANUN BOSE . . 9 W. R., 337

16. ——— Order refusing to admit

17. ——— *Case decided ex-parte.*—A special appeal does not lie from the order of a Judge declaring that sufficient cause has not been shown to his satisfaction for presenting after time an appeal from an *ex-parte* judgment of a Deputy Collector. ROGHOONATH SINGH *v.* MOHUN LAL MITTER . . . 7 W. R., 236

Contra, SUDEROODDEEN *v.* HURONATH SEIN [8 W. R., 87

18. ——— Order dismissing appeal

DEY *v.* RAMJOY DEY . I. L. R., 12 Calc., 30

19. ——— Refusal to restore appeal withdrawn.—No special appeal lies from the order of a Judge refusing an application to restore an appeal that had been withdrawn. MODHOOMUTTY DEBIA *v.* DHUNPUT SINGH . 13 W. R., 167

20. ——— Order dismissing appeal on failure of appellant to deposit costs of notice—*Act XXIII of 1861, ss. 5 and 6.*—A special appeal lay from an order passed under ss 5 and 6 of Act XXIII of 1861 dismissing an appeal

[3 W. R., Mis., 23

INDUR CHUNDER BABOO *v.* OOZEER ALI KHAN [7 W. R., 333

21. ——— Order re-admitting appeal dismissed for want of prosecution—*Civil Procedure Code, 1859, s. 347.*—A special appeal lay from an order under s. 347 of Act VIII of 1859 re-admitting an appeal dismissed for want of prosecution. DINOBUNDHOO CHUTTERAJ *v.* BEHAREE LAL MOOKERJEE . . 3 W. R., Mis, 23

22. ——— Order rejecting application

23. ——— Order rejecting application for re-admission of appeal dismissed for want of prosecution—*Civil Procedure Code, 1859, s. 347.*—A special appeal lay from an order rejecting an application, under the provisions of s. 347 of Act VIII of 1859, for the re-admission of

24. ——— Order dismissing appeal

DEVAPPA SETTI *v.* RAMANANDHA BHATT [3 Mad., 109

25. ——— Order dismissing appeal for

WAR ALI *v.* JAFFER ALI I. L. R., 23 Calc, 827

26. ——— Order refusing to admit appeal dismissed for default—*Application for re-admission.*—No special appeal lay to the High

SPECIAL OR SECOND APPEAL—*continued*

1. ORDERS SUBJECT OR NOT TO APPEAL—*continued*.

to re-admit an appeal under the provisions of s. 558 of the Code of Civil Procedure. WATSON & Co. *v.* AMBICA DASI . I. L. R., 27 Calc., 529 [4 C. W. N., 237

28. ———— Order refusing to confirm a sale—*Subsisting decree—Code of Civil Procedure (Act XIV of 1882), ss 588, 316, 244.*—

v. SARAT CHUNDER MOJUMDAR [I. L. R., 25 Calc, 175 1 C. W. N., 656

29. ———— Order affirming or reversing order confirming sale—*Civil Procedure Code, 1859, s. 257*—No special appeal lay from the decision affirming or reversing an order under s. 257, Act VIII of 1859, confirming a sale. JACKSON, J., dissented. KOOLDEEP NARAIN SING *v* LUCKHUN SING [B. L. R, Sup. Vol., 917: 9 W. R., 218

ABDOOL KUREEM *v.* OGHUN LAL [6 W. R., Mis., 119

30. ———— Order confirming sale complained of for irregularity—*Civil Procedure*

31. ———— Order of Appellate Court confirming a sale—*Civil Procedure Code, 1882*,

SPECIAL OR SECOND APPEAL—*continued*.

1. ORDERS SUBJECT OR NOT TO APPEAL—*continued*.

s. 312.— confirmit appeal.

32. ———— Order setting aside sale—*Order on regular appeal.*—The High Court has no power to entertain a special appeal from an order

33. ———————— *Civil Procedure*

under the circumstances to interfere under *s.* 622. AUBHOYA DASSI *v.* PUDMO LOCHUN MONDOL [I. L. R., 22 Calc., 802

LACHMIPAT *v* MANDIL KOER [3 C. W. N., 333

[12 W. R., 360

Order passed in appeal

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

aside on the ground of material irregularity. GOPI KOERI *v.* GOPI LAL . I. L. R., 21 Calc., 799

37. ——— Order made on application to set aside sale in execution where the auction-purchaser is a benamidar for

C. W. N., 604

Code. NARAYAN *v.* RASULKHAN [I. L. R., 23 Bom., 531

39. ——— Order refusing to set aside a sale – *Appeal from an order remanding a case—*

no second appeal lies from an order passed under s. 588, cl. 16, notwithstanding that it is an order passed by the lower Appellate Court remanding the case under s. 562, inasmuch as the order was made in a case which was itself an appeal from an order allowed by s. 588 of the Code. MATHURA NATH GHOSE *v.* NOBIN CHANDRA KUNDU BISWAS [I. L. R., 24 Calc., 774 1 C. W. N., 674

40. ——— *Order refusing to set aside sale in execution of decree—Civil Procedure Code (1882), ss. 2 and 588.*—A judgment-debtor, whose property had been sold in execution of a decree and purchased by the decree-holder, applied that the sale be set aside on the ground that the person at whose instance execution had proceeded had

41. ——— *Civil Procedure Code (1882), ss. 244, 311, and 588—Decree—Fraud—Question relating to the execution of the decree between parties to the suit—Auction-purchaser a third party.*—An application was made by the judgment-debtor against the decree-holder and the auction-purchaser, who was a third party, to have a sale set

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

trict Court. On a second appeal to the High Court

Code. HIRA LAL GHOSE *v.* CHUNDRA KANTO GHOSE [I. L. R., 26 Calc., 539

See BHOBA MOHAN PAL *v.* NUNDA LAL DEY [I. L. R., 26 Calc., 324

and MOTI LAL CHAKRABUTTY *v.* RUSSICK CHANDRA BAIRAGI . . I. L. R., 26 Calc., 326 note

42 ——— *Civil Procedure Code, 1882, ss. 244, 311—Application to set aside sale on ground of fraud.*—Where a judgment-debtor applies to have an execution-sale set aside and alleges circumstances which, if found in his favour, would amount to fraud on the part of the decree-holder or auction-purchaser, the case comes under s 244 of the Civil Procedure Code, and a second appeal lies therein. NEMAI CHAND KANJI *v.* DENO NATH KANJI [3 C. W. N., 691

from an order of remand made under s. 562 of the Code of Civil Procedure when such order was itself made in an appeal under s. 588 from an order under s. 485 of the Code. *Mathura Nath Ghose v Nobin Chandra Kundu Biswas, I. L. R., 24 Calc., 774,* followed. JHANDYA LAL *v.* SARMAN LAL [I. L. R., 21 All., 201

44. ——— Order passed by Appellate Court on appeal from order granting a review of judgment – *Civil Procedure Code (Act XIV of 1882), ss 624, 626, 629* – No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application was made by a

Court's order, granting the review as against one of the defendants but set it aside as against the other defendants. *Held* that no second appeal lay against such order. THAN SINGH *v.* CHUNDUN SINGH [I. L. R., 11 Calc., 296

See AUKHOY CHURN MOHUNT *v.* SHAMANT LOCHUN MOHUNT . . . I. L. R., 10 Calc., 788

and cases there cited.

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

45. ——— Order on application to review—*Civil Procedure Code, 1882, s. 629—Appeal from decree as amended—Practice.*—A second appeal lies against an order of a lower Appellate Court passed under s. 629 of the Civil Procedure Code (Act XIV of 1882) where the appeal to the lower Appellate Court has been, not from the order

but in spirit they would seem properly to apply also to an order of an Appellate Court. BALA NATHA *v.* BHIVA NATHA . . I. L. R., 13 Bom., 496

46. ——— Order on appeal affirming order granting application for review of judgment—*Civil Procedure Code, ss 584, 629*—No second appeal lies to the High Court under s. 584 of the Civil Procedure Code from an order dismissing an appeal under s. 629 from an order granting an application for review of judgment. GOPAL DAS *v.* ALAF KHAN . . . I. L. R., 11 All., 383

47. ——— Order setting aside order granting review—*Civil Procedure Code, 1882,*

IMAM BUX *v.* MAHOMED GOPE [I. L. R., 24 Calc., 319 note

48. ——— Order imposing fine for avoiding of summons to attend as witness —*Civil Procedure Code, 1859, s 365—Witness absconding—Right of appeal.*—By the words of s 365 of Act VIII of 1859, the Legislature must have

[1 B. L. R., A. C., 187

S. C. GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . . 10 W. R., 233

49 ——— Order of a District Court under s. 26 of the Succession Certificate Act (VII of 1889)—*Succession Certificate Act, s. 19—Jurisdiction of High Court and District*

Court There is no provision in the Act for a second appeal in any case. SABBA RAO *v.* PALANIANDI PILLAI . . I. L. R., 17 Mad., 167

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

50. ——— Order on application for revival of suit—*Act LIII of 1860, s. 2—Civil Procedure Code, 1859, s. 378*—The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of limitation prescribed by s. 30 of Act X of 1859; subsequently to this decree Act LIII of 1860 came

was final; but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal. BUNGSHEEDHUR MUNDUL *v.* PUDDOLOCHUN ROY

[Marsh., 38: W. R., F B., 11
1 Ind. Jur., O. S, 5: 1 Hay, 90

51. ——— Decree in rent suit under R100—*Bengal Rent Act (VIII of 1869), s. 102—Bengal Tenancy Act (VIII of 1885), s 5—Effect of repeal*—In a suit between landlord and tenant a decree was passed by the lower Appellate Court on the 28th of July 1885. Under the provisions of the Act then in force—namely, Bengal Act VIII of 1869, s 102—a second appeal to the High Court was prohibited. That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question. A second appeal to the High Court in that suit was filed on the 18th of November 1885. *Held* that no appeal lay HURROSUNDARI DABI *v.* BROJOHARI DAS MANJI . . I. L. R., 13 Calc., 86

52. ——— Order in suit entertained without jurisdiction—*Subsequent Act passed*

An Act was subsequently passed declaring that all suits which had been similarly entertained without jurisdiction should be deemed to have been duly preferred The plaintiff, after the passing of the Act, filed a special appeal, in which he urged that the decision of the Court of first instance was no longer illegal, and that the suit should be heard by the lower Appellate Court on its merits *Held (per*

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

[illegible]

bound to enforce. BULDEO *v.* LUCHMUN [5 N. W., 106

53. ———— Order in execution of a decree.—Under Act VIII of 1859, there was no special appeal from orders passed in execution of a decree. ANONYMOUS . 1 Ind. Jur., O. S., 50

ANONYMOUS . . 1 Ind. Jur., O. S., 68

But there is now since the passing of Act XXIII of 1861.

See MAHOMED HOSSEIN *v.* AFZUL ALLY [B. L. R., Sup. Vol., Ap., 1: Marsh., 296 W.R., F. B., 83: 2 Hay, 293

BAGUBAI *v.* NIZMUDDIN . 6 Bom., A. C., 205

VIRASAMY MUDALI *v.* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER . . 4 Mad., 32

54. — — — — *Act XXIII of 1861, ss. 11 and 44—Act VIII of 1859, ss. 257, 269, and 372.*—A special appeal will lie from an order passed on appeal in relation to the execution of a decree. MAHOMED HOSSEIN *v.* AFZUL ALI [B. L. R., Sup Vol., Ap, 1: Marsh., 296 W. R., F. B., 83: 2 Hay, 293

55. ———— *Decree in suit on bond registered under s. 53, Act XX of 1866* — No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit under s. 53 of Act XX of 1866. *Quære* – Whether an appeal lay at all against such an order passed in proceedings taken in execution of such a decree. SRI BULLOV BHATTACHARJI *v.* BABURAM CHATTOPADHYA [I. L. R., 11 Calc., 189

56. ———— *Civil Procedure Code, 1877, s. 244—Registration Act, 1866, s. 53.*— An application was made to a District Munsif on [illegible]

appeal lay. SURYA PRAKAKA RAU *v.* VAISYA SANNYASI RAZU . . I. L. R., 1 Mad., 401

57. ———— Appeal from portion of decree disallowing objection—*Civil Procedure Code, 1882, ss. 561, 584.*—A preliminary objection taken by a respondent that no second appeal lies from so much of the decree of a Subordinate Judge as disallowed objections filed by the appellant under s. 561 of the Code of Civil Procedure was held to be without weight. GANAPATI *v.* SITHARAMA [I. L. R., 10 Mad., 292

58. ———— Decision as to title to land—Appeal to High Court from decision of [illegible]

59. ———— Arbitration—*Civil Procedure Code, ss. 521, 522, and 582—Revocation of submission—Appellate decree in accordance with award.*—By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of first appeal, holding that the award was not open to objection upon the grounds mentioned in s. 521, passes a decree [illegible]

60. ———— Order reviewing and setting aside order rejecting objection to execution of decree—*Civil Procedure Code, s. 629.*—When a Munsif sets aside on review an order rejecting an objection to the execution of a certain decree, and the District Court on appeal refuse to interfere, —*Held* that no second appeal lay to the High Court. PAPAYYA *v.* CHELAMAYYA [I. L. R., 12 Mad., 125

61. ———— Order of Special Judge as to settlement of rents—*Superintendence of High Court—Bengal Tenancy Act (VIII of 1885), ss. 104, cl. 2, 105, 106, 108—Rule 33 of the Rules made under the Act—Jurisdiction—Record-of-right—Civil Procedure Code (Act XIV of 1882), ss. 108, 622.*—The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s. 622 of the Code of Civil Procedure with an order of a Special Judge in regard to settlement of rents. SHEWBARAT KOER *v.* NIRPAT ROY [I. L. R., 16 Calc., 596

62. ———— *Decision of Settlement Officer—Settlement of rent under Bengal Tenancy Act (VIII of 1885), s. 104.*—No second appeal lies to the High Court from a decision of a Revenue officer settling rents under s. 104 of the

SPECIAL OR SECOND APPEAL
—*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL
—*continued.*

Bengal Tenancy Act. ACHHA MIAN CHOWDHRY *v.* DURGA CHURN LAW I. L. R., 25 Calc., 246
[2 C. W. N., 137

63.——— *Rent-suit—Bengal Act VIII of 1869, s. 102—Bengal Tenancy Act (VIII of 1885), s. 153—General Clauses Act (I of 1868), s. 6.*—The word "proceedings" in s. 6 of Act I of 1868, as applied to a suit, means the suit as an entirety, that is, down to the final decree. A second appeal, therefore, to the High Court, on a question of the amount due as rent, will not lie when the suit was instituted previously to the passing of Act VIII of 1885, although the judgment in the suit was delivered, and the first appeal therefrom heard, subsequently to the passing of that Act. *Hurrosundari Debi v. Bhojohari Das Manji, I. L. R., 13 Calc., 86,* approved. SATGHURI *v.* MUJIDAN
[I. L. R., 15 Calc., 107

64.——— Appeal from order of District Judge—*Bengal Tenancy Act (VIII of 1885), s. 153—Appeal in rent-suits.*—In certain rent-suits

no appeal lay, as the question was not one relating to title to land or to some interest in land as between

65. ——— Appeal in cases under R100—*Bengal Tenancy Act (VIII of 1885), s. 153—Cesses, Suit for—Bengal Act IX of 1880, s. 47.*—A suit to recover cesses for an amount not exceeding R100 falls under the provisions of s. 153 of Act VIII of 1885 with respect to appeals. MOHESH CHUNDER CHUTTOPADHYA *v.* UMATARA DEBY . . . . I. L. R., 16 Calc., 638

66. ——— Order of Special Judge on appeal from settlement officer—*Bengal Tenancy Act, Ch. X, ss. 104, cl. 2, 106, 107, and 108, cl. 2—Dispute as to entries in record-of-rights—Question as to status of raiyats—Civil Procedure Code, s. 622.*—Under Ch. X of the Bengal Tenancy Act, there is to be (1) a framing of the record-of-rights; (2) a draft publication for a period of one month, during which time objections may be preferred; and (3) a final publication, previous to which publication "disputes" as to the correctness of the entries in the record-of-rights, other than entries of rents settled, are to be heard and decided. Under s. 107, the decisions of the settlement officer in all proceedings under the chapter are to have the force of decrees, and under s. 108, cl. 2,

to the High Court, and such cases can only relate to disputes regarding the correctness of entries other than the entries of rent settled. Where a decision of the settlement officer in a case under s. 104, cl. 2, of the Act dealt with the question of the status of the raiyats, and was passed before the record had been framed; and after the record had been framed, there was no dispute as to the correctness of any entry, except the entries of the rent settled,—*Held* that the order of the Special Judge on appeal from such decision of the settlement officer was not one passed

which required the interference of the High Court under s. 622 of the Civil Procedure Code. GOPI NATH MASANT *v.* ADOITA NAIK
[I. L. R., 21 Calc., 776

67. ——— Special Judge, Order of—*Bengal Tenancy Act (VIII of 1885), ss. 106 and 108—Boundary dispute—Bengal Survey Act (Beng. Act V of 1875), Part V, s. 40—Settlement officer acting as survey officer.*—A second appeal only lies to the High Court under s. 108 of the Bengal Tenancy Act from the decision of the

officer acting as a survey officer under Part V of the Bengal Survey Act (Bengal Act V of 1875). IRSHAD ALI CHOWDHRY *v.* KANTA PERSHAD HAZAREE . . I. L. R., 21 Calc., 935

68. ——— *Bengal Tenancy Act (VIII of 1885), Ch. X, ss. 106 and 108—Record-of-rights, Dispute prior to the preparation of—Standard of measurement, Question of.*—In a proceeding under Ch. X of the Bengal Tenancy

ment officer was not one under s. 106 of the Bengal Tenancy Act, and under cl. 3 of s. 108 no second appeal lay to the High Court. *Gopinath*

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

Masant v *Adoita Naik, I L. R., 21 Calc*, *776*, referred to ANAND LAL PARIA *v.* SHIB CHUNDER MUKERJEE . . I. L. R., 22 Calc., 477

69. ——— *Special Judge, Decision of—Revenue officer, Decision of—Bengal Tenancy Act (VIII of 1885), ss. 105, 106, and 108 (3)—Record-of-rights, Dispute prior to completion of—Dispute about proposed entry or omission in the record.*—The respondent, in the course of [illegible]

[illegible] case between them which was decided by the revenue officer against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. At the time of the revenue officer's decision no record-of-rights had been completed under s. 105 (1) of the Bengal Tenancy Act. On appeal to the High Court, the respondent took the preliminary objection that no appeal lay under s. 108 (3), as the case was not one under s. 106 *Held* that the decision of the revenue officer was a decision in a proceeding under s. 106 of the Bengal Tenancy Act, and that a second appeal lay from the decision of the Special Judge to the High Court *Gopi Nath Masant* v. *Adoita Naik, I. L. R., 21 Calc.*, *776*, and *Anand Lal Paria* v. *Shib Chunder Mukerjee, I L. R., 22 Calc., 477*, so far as they decide that a second appeal would not lie in such a case, overruled DENGU KAZI *v.* NOBIN KISSORI CHOWDHRANI

[I. L. R., 24 Calc., 462
1 C. W. N., 294

70. ——— *Bengal Tenancy Act (VIII of 1885), ss. 104, 106, 108—Special Judge under the Bengal Tenancy Act—Question of standard of measurement, area of lands, and liability to pay rent—Decision of the Special Judge*—Under the terms of s. 108 of the Bengal [illegible]

[illegible] and the liability of the tenants to pay rent on account of any excess lands in their possession. MATHURA MOHUN LAHIRI *v.* UMA SUNDARI DEBI

[I. L. R., 25 Calc., 34

71. ——— *Bengal Tenancy Act (VIII of 1885), ss. 105, 106, 108—Order of Special Judge as to standard of measurement of lands*—An order of the Special Judge as to the length of the standard of measurement to be used in measuring certain lands is not a decision in a case under s. 106 of the Bengal Tenancy Act, and therefore no second appeal lies from such an order to the High Court. *Mathura Mohun Lahiri* v. *Uma Sundari Debi, I. L. R., 25 Calc., 34*, and *Dengu Kazi* v. *Nobin Kissori Chowdhrani, I. L. R., 24 Calc., 462*, distinguished. NAROHARY JANA *v.* HARI CHARAN PRAMANICK I. L. R., 26 Calc., 556

72. ——— *Bengal Tenancy Act (VIII of 1885), s. 153—Execution of rent decree valued at less than R100—Civil Procedure Code (Act XIV of 1882), s. 617.*—Where the original suit is a suit for rent valued at less than R100 and the decree or order made in it does not decide a question relating to title to land or some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, no second appeal will lie in respect of an order made in execution proceedings relating thereto SHYAMA CHARAN MITTER *v.* DEBENDRA NATH MUKERJEE

[I. L. R., 27 Calc., 484
4 C. W. N., 269

73 ——— *Bengal Tenancy Act (VIII of 1885), s. 153—Determination of annual rent payable—Rate of rent*—Where the lower Appellate Court, in deciding the question as to the amount of rent annually payable, found that the [illegible]

[illegible] therefore no second appeal lay. NEIKAJEE *v* NANDA DULAL . . . . 1 C. W. N., 711

74. ——— *Suit for rent—Interest on rent—Bengal Tenancy Act (VIII of 1885), ss. 3, cl (5), and 153*—Interest on rent is not rent within the meaning of s. 3, cl. (5), of [illegible]

75. ——— *Bengal Tenancy Act (VIII of 1885), s. 153—Rent payable by the tenant not in issue in the appeal*—Under s 153 of the Bengal Tenancy Act, a second appeal lies in a rent suit whenever the decree of the Appellate Court has decided a question of the amount of rent annually payable by a tenant; it is not necessary that the amount of rent payable by the tenant should be a matter in issue in the second appeal. RAI CHURN GHOSE *v.* KUMUD MOHAN DUTTA CHAUDHURI

[1 C. W. N., 687

In the same case on review,—*Held* the question relating to instalments, though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable" within the meaning of *s. 153* of the *Bengal Tenancy Act*. Therefore no second appeal would lie in a case where the value of the suit is less than R100, even if there is a question as to the instalment of rent. *Koylash Chandra De* v. *Tarak Nath Mandal, I. L. R., 25*

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

Calc., 571 (note), referred to RAI CHARAN GHOSE *v.* KUMUD MOHAN DUTTA CHOWDHRY
[I. L. R., 25 Calc., 571
2 C. W. N., 297

555, 559, 622.—Certain members of a Moplah family sued the others in a Subordinate Court to recover their distributive share under Mahomedan law. The property to be divided was more than R5,000 in value, but the share claimed by the plaintiffs was less. The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court. The appellants preferred a second appeal to the High Court against the decision of the District Judge, and also presented a petition praying for the revision of his proceedings under the Civil Procedure Code, s. 622. *Held* that neither a second appeal (which did not lie in such a case) nor a petition under the Civil Procedure Code, s. 622, was the appropriate proceeding to be adopted by the appellants, but an appeal as from an order made under the Civil Procedure Code, ss. 57, 582, which would lie under ss. 588, cl (c), and 589. The error of the appellants being one of form merely, the Court amended the second appeal as an appeal from an ... trict ... the

[I. L. R., 11 Mad., 462

Bengal Act I of 1879 for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court, this class of cases not being within the provision of s. 137 of the same Act RAMJAN KHAN *v* RAMAN CHAMAR . . . I. L. R., 10 Calc., 89

78. ———— Suit for arrears of rent—*Chota Nagpore Landlord and Tenant Procedure Act (Beng. Act I of 1879), ss. 37, 38, 47, 49-56, 62-67 76, 98, 135, 137, 144—Civil Procedure Code (Act XIV of 1882), ss 3, 4, 534.*—No second appeal lies in a suit for arrears of rent brought under the provisions of the Chota Nagpore Landlord and Tenant Procedure Act (Bengal Act I of 1879). The cases of ...

MAHTO . . I. L. R., 27 Calc., 508
[4 C. W. N., 333

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*concluded.*

Contra, PRIAG NATH SAHA DEO *v.* MURA MUNDA
[I. L. R., 24 Calc, 249

2. RIGHT OF APPEAL.

79 ———— Appeal by one defendant against another —A special appeal cannot be entertained by one defendant against another. RAMESSUR GHOSE *v.* AZEEM JOARDAR 17 W. R., 373

80. ———— Right of parties not appealing from first Court's decision—*Ground of appeal*—Parties who did not appeal from the deci- ... peal ... on ... pre- ... t.

[W. R, 1864, Act X, 97

81. ———— Right of defendant not appearing as respondent on appeal.—A defendant who obtains a judgment in his favour in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the ap- ...

82 ———— Party dissatisfied with findings in ... *of 1877)* ... obtained ... Court of ... appeal to the High Court, on the ground that he is dissati... in the judgm... appeal from ... strictly restric... e alone. KOYLASH CHUNDER KOOSARI *v* RAM LALL NAG
[I. L. R., 6 Calc., 206

3 ADMISSION OR SUMMARY REJECTION OF APPEAL.

83. ———— Summary rejection of memorandum—*Civil Procedure Code, ss. 54, 543, 551, 552, 584—Reasons for rejection—Per* EDGE, C.J. —A Judge to whom a memorandum of appeal from an appellate decree is presented for admission is entitled to consider whether any of the grounds men- ...

appeals which have been admitted *Per* AIKMAN, J ...

taken by itself that a second appeal does not lie, a

SPECIAL OR SECOND APPEAL—*continued.*

3. ADMISSION OR SUMMARY REJECTION OF APPEAL—*concluded.*

should Code. ct that docu- ment is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. RUDR PRASAD *v.* BAIJNATH [I. L. R., 15 All., 367

dure Code is ousted by the confirmation of that decree on appeal, applies equally to second appeals dismissed under s. 551 of the Code and to second appeals tried after notice to the respondent. MUNISAMI NAIDU *v.* MUNISAMI REDDI [I. L. R., 22 Mad., 293

4. SMALL CAUSE COURT SUITS.

(a) GENERAL CASES.

85. — — **Frame of suit**—*Civil Procedure Code, s. 586.*—For the purpose of determining whether a second appeal lies or is prohibited by s. 586 of the Civil Procedure Code, what must be looked to the was instar [I. L. R., 11 All., 13

86. ——— **Cases in which appeal is taken away**—*Act XXIII of 1861, s. 27—Civil Procedure Code, 1859, s. 357.*—S 27, Act XXIII of 1861, took away special appeal in all those cases that were expressly alluded to therein, thus overriding s. 357, Act VIII of 1859. The provision applied in execution of decree, as well as in suits themselves, and to suits and proceedings in execution commenced before 1861, or even before 1859. RAM JADUB CHATTERJEE *v* RASH MONEE DOSSEE [8 W. R., 321

MOBARUKOONISSA BEGUM *v.* OZEER JEMADAR [8 W. R., 107

SOORJO COOMAR SURMA ROY *v.* KRISHTO COOMAR CHOWDHRY [12 B. L. R., 224 : 14 W. R., F. B., 30

87 ——— **Order in execution of decree**—*Suit brought before Act XLII of 1860.*—No special appeal lay from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognizable by a Small Cause Court, though the suit was instituted before the passing of Act XLII of 1860. GORA CHAND MISSER *v.* BOYKANTO NARAIN SINGH [12 B. L. R., F. B., 261 ; 20 W. R., 421

SPECIAL OR SECOND APPEAL—*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

BRICHUK SINGH *v.* NAGESHAR NATH [I. L. R., 2 All., 112

88. ——— *Act XXIII of 1861, s. 27—Execution proceedings arising out of decision in regular appeal.*—S. 27, Act XXIII of

DEBEE PERSHAD SINGH *v.* DELAWAR ALI [12 W. R., 86

89. ——— *Civil Procedure Code, s. 586—Orders in execution of decrees in Small Cause*

AITHALA *v.* SUBBANNA . I. L. R., 13 Mad., 116

90. ——— *Order in execution of decree in suit cognizable by Small Cause Court.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes and the subject-matter of the suit does not exceed R500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *Harakh v. Ram Sarup, I. L. R., 12 All., 579,* approved. *Sri Bullov Bhatta*

KHAN . . . . I. L. R., 18 All., 401

91. ——— *Suit of the nature cognisable in Courts of Small Causes—Transfer of decree—Civil Procedure Code, ss. 223, 228, 586.*—Where the original suit is a suit of the nature

92. ——— *Suit of the nature cognizable in Court of Small Causes—Civil Procedure Code, ss. 586, 622—Superintendence of High Court.*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. Therefore where execution was applied

SPECIAL OR SECOND APPEAL—continued.

4. SMALL CAUSE COURT SUITS—continued.

[I. L. R., 12 All., 581

93. ——————Suit of nature cognizable in Courts of Small Causes—Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882), ss 223, 224,

See SHYAMA CHARAN MITTER v. DEBENDRA NATH MUKERJEE . I. L R., 27 Calc., 484
[4 C. W. N., 289

cognizable by any Civil Court GUREEBOOLLAH v SYEFOOLLAH . . . . 7 W. R., 41

95. ——— Suit instituted in ordinary Civil Court, though cognizable by Small Cause Court—Civil Procedure Code, 1877,

to the mode of adjudication, and not to the forum, and the fact that the suit is instituted in the District Munsif's Court, and not in a Court of summary jurisdiction makes no difference for the purposes of that section If the matter adjudicated on in a

[I. L. R., 3 Mad., 192

96. ——————— Civil Procedure Code, 1882, s. 586—Where a suit, though one cog-

with there would not for that reason admit of a second appeal which in such a case is expressly excluded by s. 586 of the Code of Civil Procedure (Act XIV of 1882) KALIAN DAYAL v. KALIAN NAHER
[I. L. R., 9 Bom., 259

97. —— Suit transferred to regular side—Civil Procedure Code, s. 585—Provincial Small Cause Courts Act (IX of 1887), s. 25.—A suit of a nature cognizable by a Small Cause Court does not cease to be so within the meaning of the Civil Procedure Code, s 586, because the Court in

[I L R., 15 Mad., 98

98. ——— Question of jurisdiction—Provincial Small Cause Courts Act (IX of 1887), s. 16—Civil Procedure Code (Act XIV of 1882), ss 586, 646B—Civil Procedure Code Amendment Ac
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consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without putting the parties to the expense of a fresh trial. Where a suit, cognizable by a Small Cause Court, was tried both in the Munsif's and District Judge's Courts without objection to the jurisdiction,—*Held*, on a second appeal to the High Court, that s. 646B of the Civil Procedure Code must be read with s. 16 of the Provincial Small

MAITRA v. KRISTO RANGINI DASI
[I. L. R., 21 Calc., 249

(b) ACCOUNT.

99.————Suit for balance of account—Act XXIII of 1861, s 27—Suit in Civil Court in local jurisdiction of Small Cause Court—Where a suit for a balance due on account of rents collected from the plaintiff's zamindari by the defendant's

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

father acting as agent of the plaintiffs for an amount under R500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special appeal lay to the High Court, s. 27 of Act XXIII of 1861 only applying to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it. DYEBUKEE NUNDUN SEN *v.* MUDDER MUTTY GOOPTA

[I. L. R., 1 Calc., 123 : 24 W. R., 478

100. ———— **Suit against agent for account**—*Suit for account, or, in default, for damages.*—Plaintiff, a talukhdar, sued her late husband's agent for the delivery up of certain account papers and documents, for an account of his agency, and, in default of account, for R500 as damages. *Held* that the suit was of a nature cognizable by a Small Cause Court, and that consequently no special appeal would lie. HURRI NARAIN ROY CHOWDHRY *v.* JOY DURGA DASSI . . . . . . 2 C. L. R., 17

(c) AWARD.

101. ———— **Decision on award**—*Award of cognizable nature and value.*—When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. BANU *v.* NARAYAN SAHU

[4 B. L. R., Ap., 82 : 13 W. R., 233

102. ———— **Suit on award**—*Award deal-* [illegible]

[illegible]

(d) CONTRACT.

103. ———— **Suit to recover collections from co-sharer**—*Agreement to pay share to other co-sharers.*—A suit by a co-sharer to recover from the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and, if less than R500, is cognizable by a Small Cause Court. ALI AHMED *v.* OODHRAJ RAM . 10 W. R., 79

104. ———— **Suit against agent for money**—*Money received for plaintiff—Act XXIII of 1861, s. 27.*—In a suit to recover the balance, unaccounted for, of the plaintiff's money in the hands of the defendant, who had been employed as a law agent on a salary to conduct and look after the plaintiff's law suits and to receive and disburse moneys connected with such suits, it was held that the case might be brought under the [illegible] a contract' [illegible] under Act [illegible] would not [illegible] NATH SEAL . . . . . 20 W. R., 4

105. ———— **Suit on implied contract**—*Suit against co-sharers for share of rent—Civil* [illegible]

[illegible] his family, having occupied and enjoyed, to the exclusion of their co-sharers, 54 bighas of the mouzah, failed to pay any rent in respect of such occupation. *A* instituted a suit against them (making *C* and the other holders of the 6 annas [illegible]

106. ———— *Contract Act (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.*—The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patni right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to lie independently of any express promise, it was one cognizable by a Court of Small Causes and no appeal would therefore lie. *Rambux Chittangeo v. Madhoosoodun* [illegible]

107. ———— *Mofussil Small Cause Courts Act, s. 6—Civil Procedure Code, s. 586—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt*

SPECIAL OR SECOND APPEAL
—*continued*

4. SMALL CAUSE COURT SUITS—*continued.*

of living father.—In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt. *Held* by the Full Bench that the suit as against the sons was not a suit of the nature cognizable in a Court of Small Causes within the meaning of s 586 of the Code of Civil Procedure. *Held* further by the Divisional Bench that the decree against the sons was bad. NARASINGHA *v.* SUBBA
[I. L. R., 12 Mad., 139

108. ———————— *Civil Procedure Code, s 586—Provincial Small Cause Courts Act, sch. II, art. 41—Suit relating to contract—Contract Act, s. 69—Suit for contribution—Joint property* —Lands of which part belongs to the plaintiffs and part to the defendant were comprised in a pottah which ran in the names of the plaintiffs and another. The defendant's share of the assessment fell into arrear, and was collected from the plaintiffs, who now sued to recover R200, being the amount so paid, together with interest. *Held* the suit was of a nature cognizable by a Court of Small Causes, and therefore no second appeal lay. *Krishno Kamini Chowdhrani v. Gopi Mohun Ghose Hazra, I L. R, 15 Calc., 652,* followed. SRINIVASA *v.* SIVAKOLUNDU
[I. L. R., 12 Mad., 349

(*e*) CONTRIBUTION.

109. ——— Suit for contribution for revenue paid to save estate.—A claim for money below R500 paid as revenue by one partner in an estate on account of another, in order to save the whole estate from sale, arises under an implied contract between them, and therefore is cognizable by a Small Cause Court No special appeal lay in such a case under s 27, Act XXIII of 1861 RAM MONEY DOSSIA *v.* PEAREE MOHUN MOZOOMDAR
[6 W. R., 325

(*f*) CUSTOMARY PAYMENT.

110. ——— Suit by zamindar against patnidar for dâk expenses—*Act XXIII of*

special appeal will lie. DHERAJ MAHTAB CHUND BAHADOOR *v* RADHA BINODE CHOWDHRY
[8 W. R., 517

ERSKINE *v.* TRILOCHUN CHATTERJEE
[9 W. R., 518

(*g*) DAMAGES

111. ——— Suit for damages—*Damages to moveable or immoveable property* —No special appeal lies in a suit for damages below R500, whether the damages are on account of moveable or immoveable property. BHEENUCK LALL MAHTOON *v.* RUNG LALL MAHTOON . 11 W. R., 369

SPECIAL OR SECOND APPEAL
—*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

112 ——— Suit where claim for dam

MONEE SINGH DEO *v* GORDON, STUART & CO
[1 Ind Jur, N. S, 356 : 6 W. R, 152

113

114. ——— Suit for damages for assault—*Absence of pecuniary injury.*—No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff. When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts, and a special appeal will lie to the High Court, although the damages claimed are below R500 ALI BUKSH *v* SAMIRUDDIN
[4 B L R, A. C, 31 : 12 W R, 477

RAJ CHUNDER CHUCKERBUTTY *v* PUNCHANUN SURMAH CHOWDHRY . . 4 W R, 7

115. ——— Suit for damages for personal injury—*Actual pecuniary damage* —The

brought against them, and R100 for injury to his reputation and feelings. *Held* that, inasmuch as
pecuniary
nal injury,
proviso (3),
Act (XI of

[I. L R, 10 All, 49

116 ——— Suit for money paid by unsuccessful claimant to attached property —*Civil Procedure Code, 1859, s 246* —A suit for money paid by an unsuccessful claimant, under s 246, Act VIII of 1859, in order to save from sale

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

his share of an estate which had been attached in execution of a decree, is in reality a suit for damages, and (the value being below R500) is in the nature of a Small Cause Court suit in which no special appeal will lie. POORSUTTUM CHUNDER *v.* GOUR SOONDER PANDEY . . . 18 W. R., 283

117 ———— Suit to recover money attached—*Removal of attachment on wrongful objection to attachment of property.*—*C*, a decree-holder, alleging that *K*, a lambardar of a village,

that such objection was dishonest and wrongful, inasmuch as such money was still in *K*'s hands sued *K* for the amount of such money and the costs of the attachment proceedings. *Held* that the suit was one for damages, and, the amount claimed not exceeding R500, one of the nature cognizable in a Court of Small Causes, and consequently a second appeal in the suit would not lie. KALIAN SINGH *v.* CHUNNI LAL . . . I. L. R., 6 All., 10

118. ———— Suit for money lent to redeem mortgage—*Suit for damages as on breach of contract—Act XXIII of 1861, s. 27.*—Defendant borrowed a sum of money below R500 from the

his dues was one for damages as upon a breach of contract in which, under s. 27, Act XXIII of 1861, no special appeal would lie. KHULLEEL MAHOMED *v.* FURZAM ALLY . . . 12 W. R., 269

120. —— Suit for damages to crops by inundation—*Omission to cut bund—Act XLII of 1860, s. 3.*—Under s. 3, Act XLII of 1860, a suit for damages of any kind below R500 (*e.g.*, a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) was cognizable by a Small Cause Court; and consequently, under s. 27, Act XXIII of 1861, no special appeal lay in such a case. GOPEENATH PAUL *v.* GEORGE [6 W. R., 7

121. ———— Suit for damages for inadequate sale of decree—*Act XXIII of 1861, s. 27*—No special appeal lay under s. 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONEE THAKOOR *v.* BISHAMBHUR DOSS [6 W. R., 215

122. ———— Suit for defamation of character—*Absence of pecuniary injury.*—Suits for defamation of character, where there has not been any actual pecuniary loss, were not, under cl. 3, s. 6, Act XI of 1865, cognizable by the Small Cause Courts, and therefore in such a suit a special appeal would lie under Act XXIII of 1861, s. 27. BHAIRAB CHANDRA CHUCKERBUTTY *v.* MAHENDRA CHANDRA CHUCKERBUTTY [4 B. L. R., Ap., 59: 13 W. R., 118

123. ———— *Absence of pecuniary damage.—Quære*—Before a suit can lie in a case of defamation of character, is it necessary to presume that actual pecuniary damage has resulted? DHURMO DOSS KOONDOO *v.* KOYLASH KAMINEE DOSSIA . . . . . 12 W. R., 372

124. ———— Suit for malicious prosecution—*Absence of pecuniary damage.*—The defen-

NADIAR CHAND CHATTERJEE [4 B. L. R., A. C., 35 note: 10 W. R., 115

125. ———— *Injury to reputation.*—The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and

[4 B. L. R., A. C., 33 note

126. ———— Suit for damages for loss of reputation and business.—A suit for damages not exceeding R500 on account partly for injury to reputation and partly for loss in business and professional position was held to come within the provisions of s. 6, Act XI of 186 , and was not open to special appeal. BROJO SOONDUR THAKOOREE *v.* ESHAN CHUNDER ROY . . 15 W. R., 179

127. ———— Suit for money paid as rent to save estate from sale—*Enforced payment where rent had been already paid—Act XXIII of 1861, s. 27—Act XI of 1865, s. 6—Act X of 1859, s. 23, cl. 2*—The plaintiff, the holder of a patni taluk, by an arrangement with the defendants his zamindars paid the Government revenue and the road-cess tax for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he therefore deposited it in the Munsif's Court in accordance with s. 46

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

to pay the sum claimed for rent. In a suit brought to recover that amount with interest,—*Held* it was a suit cognizable by a Court of Small Causes under s. 6 of Act XI of 1865, and therefore a special appeal was barred by s. 27, Act XXIII of 1861.

128.———Suit for payments made on account of rent—*Refusal to allow for such payments in rent account.*—A suit to recover certain cash and the value of certain grain which the defendants had persuaded the plaintiff to pay them, engaging that the lambardar would allow the same in his account (as part payment of rent), but which the lambardar refused to do, is practically a suit for damages, and, the amount in question being cognizable by a Small Cause Court, no special appeal can be entertained. YACOOB ALI *v.* KOOER SINGH [2 N. W., 111

129.———Suit to recover a share of malikana—*Act XXIII of 1861, s. 27.*—A suit to

[3 B. L. R., Ap, 96

S. C. RASMONEE DEBIA *v.* MAHOMED HAFEZOOLLAH [12 W. R., 29

130.——— Suit for profits of land

The defendant raised a plea to the jurisdiction of the Court, and the Judge, without recording any

reversed on appeal A petition of second appeal was presented by the plaintiff. The defendant objected that no second appeal lay under the Civil Procedure Code, s 586 *Held* that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provincial Small Cause Courts Act of 1887. ANNAMALAI *v.* SUBRAMANYAN . . I. L. R., 15 Mad., 298

(*h*) DEBTS.

131.

(*i*) DECLARATORY DECREE

132. ——— Suit to have property made over to plaintiff on an adjusted account —Where, on an adjusted account between two parties, one claims from the other some money and some grain which are shown to be due to him and asks in effect that they may be made over to him, the

(*j*) DECREE

133. ——— Decree for land under a compromise in a suit cognizable by a Small Cause Court—*Act XXIII of 1861, s 27.*- In a suit for recovery of a sum of money below R500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment-debtor to the High Court —*Held* that under s 27, Act XXIII of 1861, no special appeal lay to the High Court. TALAN BIBI *v.* TEND BIBI [6 B. L. R., Ap., 82: 15 W. R., 65

(*k*) IMMOVEABLE PROPERTY.

134. ——— Suit for kattubadi and karnam's emoluments—*Civil Procedure Code (1882), s 586—Provincial Small Cause Courts Act (IX of 1887), sch. I, art 13* —Where plaintiff sued

See VENKATARAMA DOSS *v.* MAHARAJAH OF VIZIANAGRAM . I. L. R., 19 Mad., 103

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

(*l*) MAINTENANCE.

135. ——— **Suit by widow for maintenance**—*Act XXIII of 1861, s. 27.*—A Hindu widow who had been supported by her father-in-law after his death sued his eldest son for maintenance and obtained a decree for R150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely [illegible]

[4 Bom., A. C., 73

JUDAL KOM RANCHHOD MULJI *v.* HIRA MULJI [4 Bom., A. C., 75

(*m*) MESNE PROFITS.

136. **Suit for mesne profits**—*Act XXIII of 1861, s. 27—Suit under R500.*—A suit for the recovery of mesne profits (not amounting to R500) is cognizable by a Court of Small Causes. A special appeal therefore does not lie in such a suit. KAKAJI SAKHARAM *v.* GOVIND GANESH [8 Bom., A. C., 96

137. ——— *Act XI of 1865, s. 6—Act XXIII of 1861, s. 27.*—In a suit brought in the Sudder Ameen's Court for R143 for mesne [illegible]

138. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31.*—Where the plaintiff, after obtaining a decree in a suit for possession of certain land of which he had been dispossessed by the defendants, [illegible]

Court, and therefore a second appeal in the suit would lie to the High Court SRIRAM SAMANTA *v.* KALIDAS DEY . . I. L. R., 18 Calc., 316

139. ——— *Suit for mesne profits where the value of the subject-matter in dispute is less than R500—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31—Small Cause Court, Mofussil, Jurisdiction of.*—*Held* by the Full Bench (GHOSE and BANERJEE, JJ., dissenting) that no second appeal lies in a suit for mesne profits where the value of the subject-matter in dispute is less than R500. *Sriram Samanta v. Kalidas Dey, I. L. R., 18 Calc., 316,* overruled. KUNJO BEHARY SINGH *v.* MADHUB CHUNDRA GHOSE [I. L. R., 23 Calc., 884

140. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31—Suit for mesne profits under R500—Civil Procedure Code (Act XIV of 1882), s. 586.*—A suit for mesne profits is cognizable in Courts of Small Causes where the value of the subject-matter in dispute is less than R500 and art. 31 of sch. II of the Provincial Small Cause Courts Act does not apply thereto. Such a suit falls within the provisions of s. 586 of the Civil Procedure Code, and no second appeal lies from a decision in it. SESHAGIRI AYYAR *v.* MARAKATHAMMAL [I. L. R., 22 Mad., 196

LINGAYYA AYYAVARU *v.* MALLIKARJUNA AYYAVARU . . I. L. R., 22 Mad., 196 note

(*n*) MONEY.

141. ——— **Suit for money had and received for the plaintiff's use.**—*C*, a mortgagee, the mortgage having been foreclosed, sued *D*, the mortgagor, for possession of the mortgaged [illegible]

sale of the property to *L*, and deposited it in Court. The deposit was made after the specified day, and consequently *C* took possession of the property. The money deposited by *D* remained in deposit, and, while there, *C* caused it to be attached in execution of a money decree he held against *D*, and it was paid to him. *L* thereupon sued *C* in the Munsif's Court to recover such money, which amounted to R350. *Held* that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognizable in a Court of Small Causes. LACHMAN PRASAD *v.* CHAMMI LAL . . . I. L. R., 4 All., 6

COLLECTOR OF CAWNPORE *v.* KEDARI [I. L. R., 4 All., 19

142. **Suit to recover purchase-money**—*Act XXIII of 1861, s. 27.*—*Held* that the suit to recover R200 paid in respect of the pur- [illegible]

143. ——— **Suit for money paid as excess of rent.**—In a suit for recovery of a sum of money less than R500, as money paid in excess of rent due,—*Held* that, the suit being cognizable by the Court of Small Causes under s. 6, Act XI of 1865, no special appeal lay to the High Court. SIB SAHAYA SUKUL *v.* HIRCHANDRA JUBARAJ [2 B. L. R., A. C., 173

S. C. SHIB SUHAYE SOOKOOL *v.* BEER CHUNDER JOOBRAJ . . . . . 11 W. R., 30

SPECIAL OR SECOND APPEAL—*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

144. ——— Suit for money illegally levied on land—*Act X of 1876, s. 15—Civil Procedure Code, 1876, s 586* —The plaintiff sued to recover from the defendant R71 3 3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local fund cess The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District

s. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court, but the nature of the suit remains unaltered. MUSA MIYA SAHEB *v.* GULAM HUSEIN

[I. L. R., 7 Bom., 100

145. ——— Suit by lessee for refund of revenue—*Contract to refund excess.* - In a suit by a lessee upon a contract for a refund of excess

146. ——— Suit to recover money paid in excess of share of profits of land—A suit to recover from the defendant R235, paid to him in excess of his share of the profits of certain lands, is cognizable in the Small Cause Court, and consequently no special appeal will lie in such a case under s. 27, Act XXIII of 1861. JOYNARAIN MANJEE *v.* MUDDOOSOODUN GORAIT . 2 W. R., 134

147. ——— Suit for recovery of money stolen from Court—*Suit against Government* — A sum of money was stolen from the Judge's Court of Tippera while *A* was the Nazir *A* paid the

(*o*) MORTGAGE.

in law be primarily satisfied out of immoveable property, is not a suit of a nature cognizable in Courts of Small Causes under s. 27 of Act XXIII of 1861, so as to exclude a right to special appeal. This is so, though the plaint on the face of it seeks recovery in the alternative, either from the mortgagor personally, or from the mortgaged property. ATMARAM BALLAL KAGJI *v.* SADASHIV HARI MAHAJANI . 2 Bom., 1

149. ——— Suit for enforcement of hypothecation against moveable property—*Act XI of 1865, s 6* - A suit by the assignee of a registered mortgage-bond hypothecating certain crops to enforce the hypothecation is not a Small Cause Court suit within the meaning of s. 6 of Act XI of 1865, in which a second appeal would be barred by s 586 of the Civil Procedure Code.

(*p*) MOVEABLE PROPERTY

150. ——— Suit for price of personal property sold—*Suit by co-sharer.* - A suit lies in a Small Cause Court by a co-sharer to recover the price of a share of personal property alienated by another co-sharer. RADHANATH SHAHA *v* KAMEENEE SOONDEREE DOSSEE . . 2 W. R., 37

151. ——— Suit for materials of hut, or their value—*Act XXIII of 1861, s. 27.*—A suit for the materials of a hut, in which the plaintiff sought for a decree to break up and remove them, or to obtain their value (R29), was held to be a case cognizable by a Small Cause Court under Act XI of 1865, s. 6, and therefore no special appeal would lie. KASHEE CHUNDER DUTT *v* JUDOONATH CHUCKERBUTTY . . . . 10 W R., 29

152. ——— Suit to recover possession of share of a boat—*Act XXIII of 1861, s 27* — A suit to recover possession of a share of a boat by establishment of the plaintiffs' right is a suit for personal property within the meaning of Act XI of 1865, s. 6, and therefore no special appeal lies in such a case under Act XXIII of 1861, s 27. MAHOMED AZIM BHOOYAH *v* MAHOMED SOMEE

[21 W. R., 413

153. ——— Suit for the value of trees and fish—*Trees destroyed by defendant.*—A suit to recover the value of a tree destroyed by the defendants and for the value of fish taken from the plaintiff's tank (the claim being under R50) is a suit cognizable by a Small Cause Court, and no special appeal lies to the High Court. SUJJAD ALI *v* BHOLARAM . . . 5 N. W., 24

154. ——— Suit for recovery of value of fruit from trees.—Where a suit was brought

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

a special appeal would not lie. SHAMANUND *v.* NUNDKOOMAR
[3 Agra, 290: Agra, F. B., Ed. 1874, 153

155. ———— **Suit for value of sugar-mill.** —A stone sugar-mill is moveable property, and a suit for the value of it, if under R500, will lie in the Small Cause Court. No special appeal lies therefore in such a suit. HURMUNGAL SINGH *v.* ATHUL SINGH
[4 N. W., 15

156. ———— **Suit by widow to recover personal property or its value taken from deceased**—*Act XXIII of 1861, s. 27.*—The widow and heiress of a deceased person sued the defendants to recover personal property, valued at R200, said to have been taken by them from deceased in his lifetime. *Held* that a special appeal was barred by s. 27, Act XXIII of 1861. KAPARI BEWA *v.* KESHRAM KUCH . 2 B. L. R., Ap., 23: 11 W. R., 93

(*q*) PROFITS OF LAND.

157. — **Suit to recover a certain sum on account of a share in property**—*Civil Procedure Code (1882), s. 586—Prayer for account—Question of title.*—Plaintiffs sued to recover, on account of their share in the produce of certain dhara and khoti properties, R339-14-2, or any other sum which might be found due to them on taking account from the defendant, who was the managing khot. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was R72-14-11. On second appeal,—*Held* that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKER *v.* BALAJI BAPUJI
[I. L. R., 21 Bom., 248

(*r*) RENT.

158. ———— **Suit for arrears of rent**—*Act XXIII of 1861, s. 27.*—In suits for arrears of rents of land, when the claim is under R500, a special appeal lies to the High Court, such claims not being generally cognizable by Courts of Small Causes. RAMCHANDRA RAGHUNATH *v.* ABAJI BIN RASTYA
[6 Bom., A. C., 12

159. ———— *Bom. Reg. XVII of 1827, s. 31, cl. 3—Act XXIII of 1861, s. 27.*—The expression "or former year" in Regulation XVII of 1827, s. 31, cl. 3, did not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a revenue officer, when Act XI of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI . . . . . 11 Bom., 106

160. ———— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. 5—Provincial Small Cause Courts Act, sch. II, art. 8.*—*Held* by the Full Bench (BANERJEE, J., dissenting) [illegible]
[I. L. R., 27 Calc., 827
4 C. W. N., 357

161. ———— *Suit for arrears of rent brought by assignee of landlord.*—A second [illegible]
[4 C. W. N., [illegible]

162. **Suit for zamindari cess**—*Suit for payment for use of land—Act XXIII of 1861, s. 27.*—Where the plaintiff claimed a sum of money under the name of a zamindari cess, but in point of fact what was claimed was claimed on account of the use of land,—*Held* that such a suit was a suit of a nature cognizable by a Small Cause Court under s. 6, Act XI of 1865, and that a special appeal would not lie. BUCHOO CHOWDRY *v.* GHOORLAIT . . . . . . 4 N. W., 56

163. ———— **Suit for Government assessment and local fund cess**—*Suit for arrears of rent.*—The defendant executed to the plaintiff in 1847 a mulgeni kabuliat (*i.e.*, one kabuliat corresponding to a lease at a fixed rental), agreeing to pay to the plaintiff R150 annually. At the date of the execution of the mulgeni the Government assessment was R56-8-0, but in 1872 it was enhanced to R129-8-0, and a local fund cess of R1-8-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. On appeal an objection was taken that, the amount claimed by the plaintiff being less than R500, the suit was cogni- [illegible]

164. ———— **Suits for rent**—*Civil Procedure Code (1882), s. 586—Provincial Small Cause Courts Act (IX of 1887), s. 15, sch. II, art. 8—"Suits of the nature cognizable in Courts of Small Causes."* [illegible]

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

Local Government with authority to exercise jurisdiction with respect thereto under s. 15 and sch II, art. 8, of the Provincial Small Cause Courts Act 1887. A second appeal will lie in such a suit, though the amount or value of the subject-matter of the original suit does not exceed R500. VEDACHALA MUDALI *v.* RAMASAMI RAJA . . I. L. R., 23 Mad., 229

165. ———————— *Civil Procedure* [illegible]

original suit does not exceed five hundred rupees. So *held* (SUBRAHMANIA AYYAR, J., dissenting). *Vedachala Mudali v. Ramasami Raja, I. L. R., 22 Mad., 229*, overruled. SOURNDARAM AYYAR *v.* SENNIA NAICKAN . I. L. R., 23 Mad., 547

166. ———————— *Civil Procedure Code (Act XIV of 1882), s. 586—Landlord and Tenant—Suit by tenant to recover excess payments of rent—Bengal Tenancy Act (VIII of 1885), s. 144.* —A suit between landlord and tenant for the recovery by the tenant of excess payments taken by the landlord [illegible]

167. ———————— *Suit by landlord against tenant for a certain sum payable by him out of the rent to a third person by assignment —Civil Procedure Code (1882), s. 586—Suit for rent or for damages.*—*Held* (by the Full Bench) that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a thi[illegible] not [illegible] in a[illegible] der[illegible] *Mohabut Ali v. Mahomed Faizullah, 1 C. W. N., 455.* BASANTA KUMARI DEBYA *v.* ASHUTOSH CHUCKERBUTTY . . I. L. R., 27 Calc., 67 [4 C. W. N., 3

(s) SPECIFIC PERFORMANCE.

168. ———— **Suit for specific performance of contract**—A suit (valued at R500) for specific performance of a contract is not cognizable by a Small Cause Court. Consequently no special appeal will lie in such a case. NILKANTH SURMAH *v.* BISHEN BASHEE . . . . 6 W. R., 322

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

(t) SURETY.

169. ———— **Suit to establish surety's liability for rent**—*Necessity to prove non-payment by principal.*—A suit to establish a surety's liability on account of arrears of rent due from a patnidar where the non-payment of the rent by the patnidar would have to be established is not cognizable by a Small Cause Court; and consequently a special appeal was not barred in such a case by s. 27, Act XXIII of 1861. MAHATAB CHUND BAHADOOR *v* BROJONATH MITTER . . . 8 W. R., 111

(u) TAX.

170. **Suit for arrears of chowkidari tax payable by patnidar under patni settlement**—*Rent—Bengal Tenancy Act (VIII of 1885), s. 3 (5)—Civil Procedure Code (1882), s. 586.*—In a suit for arrears of chowkidari tax payable by the patnidar under *the patni settlement*, the Court found that it was not an illegal cess, and could be legally recovered *Held* (upon the objection of the respondents that, the suit being one of the nature cognizable by a Small Cause Court and [illegible]

the patni tenure, and as the payment was to be made periodically to the zamindar by the patnidar, and the amount agreed to be paid was lawfully payable, it came within the definition of "rent" in the Bengal Tenancy Act, and therefore a second appeal would lie *Dheraj Mahtab Chund Bahadoor v.* [illegible]

KHAN BAHADUR *v* TIRTHABASHINI [I. L. R., 22 Calc., 680

(v) TITLE, QUESTION OF

171. ———— **Issues affecting proprietary rights**—*Act XXIII of 1861, s. 27.*—The decision or order mentioned in s 27 was confined to those decrees which, if made in a Small Cause Court, would be conclusively binding on the parties, and did not include a decree based upon an issue affecting the proprietary relations between the parties, [illegible]

[4 W. R., 60

See KISTO COOMAR CHOWDHRY *v.* ANUNDMOYEE CHOWDHRAIN . . . 6 W. R., Mis., 128

172. ———— **Question of title incidentally raised.**—When a suit is of a nature cognizable by a Small Cause Court, there is no right of special

SPECIAL OR SECOND APPEAL —*continued*

4. SMALL CAUSE COURT SUITS—*continued.*

appeal, although a question of title is incidentally raised, the finding of the Small Cause Court not being conclusive and only for the purpose of that suit. SUNKUR LALL PATHUCK GYAWAL *v.* RAM KALEE DHAMIN . . . 18 W. R., 104

173. ———— **Question of title raised and tried**—*Act XXIII of 1861, s. 27.*—No special appeal lies to the High Court in a suit cognizable by *the Small Cause Court, although a question of title* to immoveable property has been raised and tried in the Court below. MOHESH MAHTO *v.* PIRU [I. L. R., 2 Calc., 470: 1 C. L. R., 33

B. L. R., Sup. Vol., 31 W. R., F. B., 127, and *Nanda Kumar Banerjee v. Ishan Chandra Banerjee, 1 B. L. R., A. C., 91 10 W. R., 130,* distinguished. PACHOO RAREE *v.* GOOROO CHURN DASS [15 W. R., 556

175. ———— Where, in a suit cognizable by a Court of Small Causes, in order to determine the question at issue between the parties, it was necessary for the Court of appeal in the first instance to determine a question of title to land (which had been raised by the Munsif).—*Held* that a spe
Court
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176. ———— **Question of title decided by Appellate Court.**—Where a suit appears from the plaint to be one of a nature cognizable in a Court of Small Causes, but a question of title has been gone into and decided by the District Court in appeal, a special appeal will lie. DIKSHIT *v.* DIKSHIT . . . . 2 Bom., 4

177. ———— **Suit for damages involving question of title.**—A suit for damages for an amount not exceeding R500 is within the competency of a Small Cause Court to decide, notwithstanding that it involves an inquiry into a question of right. No special appeal lies in such a case. LUCKHEE DEBIA CHOWDHRAIN *v.* MALICK [W. R., 1864, 237

KHANDU VALAD KERU *v.* TATIA VALAD VITHUBA [8 Bom., A. C., 23

178. ———— **Suit which may involve question of title**—*Suit for damages for detention of materials of house—Act XXIII of 1861, s. 27.* —A suit for damages for detention of materials of a house involves no question of title. Such a suit is cognizable by a Small Cause Court, if under R500, and a special appeal was barred by s. 27, Act XXIII

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

of 1861. KISHUB CHUNDER SHAHA *v.* BROHMO MOYEE DABEA . . . . 1 W. R., 35

RAM DYAL GANGOOLY *v.* HURO SOONDUREE DOSSIA . . . . . 10 W. R., 273

180. ———— *Suit for price of trees cut down and removed—Damages—Act XXIII of 1861, s. 27.*—A suit for the price of trees

181. ———— *Act XXIII of 1861, s. 27—Claim by zamindar to wrecked property—Salvage.*—A quantity of rice having been recovered from the wreck of a boat, a portion was left on the river bank by the owner for the remuneration of the salvors, including some left as "huk zamindari," which the owners of a neighbouring jote carried away. In a suit brought by the former against the jotedar for the value of the portion last mentioned, the Court of first instance went into the question of the custom entitling to property so saved. *Held* that this question was only incidentally raised for the purposes of the suit, which was simply one for the value of moveable or personal property and cognizable by a Court of Small Causes, and, the value being less than R500, a special appeal did not lie. GRANT *v.* MODHOO SOODUN SINGH [10 W. R., 79

182. ———— **Suit for arrears of malikana**

possession himself or to sell it to some one else; and he is to pay R25 of the Queen's coin to me annually (as malikana), which he had agreed to pay." *M* mortgaged the property to *B*, who obtained possession, and, after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held*, upon a preliminary objection made with reference to s. 586 of the Civil Procedure Code, that the intention of the Legislature, as expressed in s. 6 of the Mofussil Small Cause Courts Act (XI of 1865), was that suits directly and immediately involving questions of title to immoveable property should not be cognizable by the Small

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*concluded.*

Cause Courts; that in the present suit such a question was directly involved; and that consequently s. 586 of the Code had no application, and a second appeal would lie. *Mahomed Karamutoollah* v. *Abdool Majeed, 1 N. W., 205*, and *Bhawan Singh* v. *Chattar Kuar, Weekly Notes, All., 1882, p. 114*, referred to. *Pestonji Bezonji* v. *Abdool Rahiman, I. L. R., 5 Bom., 463; Qutub Husain* v. *Abul Husain, I. L. R., 4 All., 134*, and *Kadiressur Mookerjea* v. *Gooroo Churn Mookerjee, 2 C. L. R., 388*, distinguished. CHURAMAN *v.* BALLI

[I. L. R., 9 All., 591

(*e*) TRESPASS.

183. ———— Suit for damages for tres- ... —In ... under ... Court ... been raised in the Courts below LUKHYNARAIN CHUTTOPADHYA *v.* GORACHAND GOSSAMY

[I. L. R., 9 Calc., 116: 12 C. L. R., 89

5. GROUNDS OF APPEAL.

(*a*) FORM OF.

184. ———— Requisites for grounds ... RAM KALP ROY

[6 B. L. R., Ap., 49: 15 W. R., 8

... enacts that no second appeal shall lie except on the grounds mentioned in s. 584. The provisions of those sections should be strictly adhered to. *Anangamanjari Chowdhrani* v. *Tripura Sundari Chowdhrani, I. L. R., 14 Calc., 740. L. R., 14 I ...*

(*b*) QUESTIONS OF FACT.

186. ———— Grounds of second appeal —*Civil Procedure Code, s. 584.*—Under the Code no second appeal will lie, except on the grounds specified in s. 584. There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Where there is no error or defect in the procedure, the finding of the first Appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding. *Anangamanjari Chowdhrani* v. *Tripura Sundari Chowdhrani, L. R., 14 I. A., 101: I. L. R., 14 Calc., 740*, and *Pertab Chunder Ghose* v. *Mohendra Purkait, L. R., 16 I. A., 233: I. L. R., 17 Calc., 291*, referred to and followed. *Futtehma Begum* v. *Mohamed Ausur, I. L. R., 9 Calc., 309*, and *Nivath Singh* v. *Bhikki Singh, I. L. R., 7 All., 649*, overruled. DURGA CHOWDHRANI *v.* JEWAHIR SINGH CHOWDHRI

[I. L. R., 18 Calc., 23
L. R., 17 I. A., 122

187. ———— Doubtful findings of fact—*Consideration of evidence.*—No Court of second appeal can entertain an appeal upon any question as to the soundness of findings of fact by the Court of first appeal, and if there is evidence to be considered, the decision of that Court, however unsatisfactory it might be, if examined, must stand final. RAMRATAN SUKAL *v.* NANDU

[I. L. R., 19 Calc., 249
L. R., 19 I. A., 1

188. ———— What are or are not questions of fact—*Question of custom.*—A question of custom is a question of fact on which the lower Court alone can pass a decision, and on which the High Court cannot interfere. HUREEHUR MOOKERJEE *v.* JUDOONATH GHOSE . . 10 W. R., 153

ALI *v.* GOPAL DASS 13 W. R., 420

189. ———— *Question of damages—Discretion of Judge.*—A Judge has a discretion with respect to the amount of the damages which will not ordinarily be interfered with on special appeal. TEEKARAM KYBUTT *v.* RAJKISHEN ROY . . Marsh., 495

AHMEDOOLLA *v.* HUR CHURN PANDAH

[2 W. R., 236

190. ———— *Question of amount of damages—Difference of opinion on evidence between lower Courts.*—In a suit for damages on account of false charge and consequent arrest, in which the Court of first instance found that there ... appeal. The amount of damages to be awarded is a question for a jury to decide, and one with which the High Court cannot interfere in special appeal. BANEE MADHUB CHATTERJEE *v.* BHOLANATH BANERJEE. HEERA CHAND BANERJEE *v.* BANEE MADHUB CHATTERJEE . . 10 W. R., 164

191. ———— *Question of amount of damages—Award of damages under Act X of 1859, s. 10.*—An award of damages by a lower Appellate Court under s. 10, Act X of 1859,

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

though excessive, if it is within the legal limit, cannot be interfered with in special appeal as an error of law. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . 13 W. R., 22

Affirmed on review . . . 13 W. R., 391

192. ——— ——— *Refusal to award damages—Beng Act VI of 1863, s. 2—Discretion of Court.*—The refusal of a Court to award damages under s. 2, Bengal Act VI of 1862, is not a ground for special appeal, it being a matter of discretion to award them or not. DHEERAJ MAHATAB CHAND *v.* DEBENDER NATH THAKOOR [W. R., 1864, Act X, 68

GOPAL LAL THAKOOR *v.* MAHOMED KADIR [W. R., 1864, Act X, 73

193. ——— ——— *Question of law—Sufficiency of evidence.*—It is a question of law for the Court to decide on second appeal whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact. BIDHUMUKHI DABEA CHOWDHRAIN *v.* KEFUTULLAH . . . . I. L. R., 12 Calc., 93

194. ——— ——— *Jurisdiction, Question of.*—A special appeal will not lie upon a question of jurisdiction depending upon a question of fact, unless the fact has been determined by the lower Court or is admitted by the parties *Quære*—

S. C. POOLIN BEHARY SEIN *v.* LUTEEFOONISSA BEEBEE . . . . . Marsh., 107

COURT OF WARDS *v.* ROOP MOONJUREE KOOER [25 W. R., 280

195. ——— ——— *Question of what passes at sale in execution of decree—Mixed question of law and fact.*—The question what is actually bargained and paid for at an execution sale is a mixed question of law and fact, and the High Court *on second appeal is not bound by the finding of the* Court of first appeal with regard to it. GNANAMMAL *v.* MUTHUSAMI . I. L. R., 13 Mad., 47

196. ——— ——— *Existence of legal necessity.*—Where both the lower Courts found that there was no necessity for a widow to borrow money, the High Court refused in special appeal to consider it other than a question of fact, and held they could not interfere with the finding in special appeal. INDER CHUNDER BADOO *v.* HURNAUTH CHOWDHRY . . . 1 Hay, 257

197. ——— ——— *Question of law—Onus probandi.*—Where each of the parties has gone into evidence upon the issues raised in the lower Courts, no question as to whether the onus lies on the one or on the other can arise in special appeal. HUREE MOHUN MOJOOMDAR *v.* ASGUR BEHAREE [23 W. R., 324

Reversing the decision in ASGUR BEPAREE *v.* HUREE MOHUN MOJOOMDAR . 23 W. R., 56

198. ——— ——— *Proceeding to enforce decree—Act XIV of 1859, s. 20.*—The question whether the action of the judgment creditor taken in execution of his decree was a proceeding ... e meaning of ... stion of fact ... nd not one of ... l to the High

[13 B. L. R., Ap., 1: 21 W. R., 188

199. ——— ——— *Order finding proceedings to enforce decree not bonâ fide—Act XIV of 1859, s. 20.*—The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ fide* to keep alive such decree was a question of fact, and no special appeal lay from an order finding that the proceedings taken were *bonâ fide* BHUBAN MOHUN CHATTOPADHYA *v.* SAUDAMINI DEBI . . 5 B. L. R., Ap., 59

200. ——— ——— *Service of notices.*—Where a Judge found no evidence that the notices in certain execution-proceedings were not caused to be properly served, and that those notices were not made in good faith, the finding was held to be a finding of fact which could not be disturbed in special appeal. ABDOOL AZEEZ *v.* SHUMSUNNISSA [11 W. R., 263

201. ——— ——— *Service of notice of enhancement.*—A decision that notice of enhancement was duly served cannot be interfered with in special appeal TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 23 W. R., 432

202. ——— ——— *Right of way.*—In suits to enforce a right of way, the question whether the plaintiff has a right of way or not is a question of fact to be determined by the evidence he

RAM CHANDRA

[5 B. L. R., Ap., 84: 14 W. R., 124

203. ——— ——— *Finding as to user.*—A finding of a lower Appellate Court as to a right of user being proved cannot be interfered with on special appeal, even though not very distinct as to the precise period of enjoyment. WUZEEROODDEEN *v.* SHEOBUND LALL . . . 11 W. R., 285

204. ——— ——— *Civil Procedure Code, s. 584—Powers of High Court on second appeal.*—On second appeal by a landlord against a decree of a District Judge, who stated in his judgment that, "though the tenant admitted the execution of the muchalka, it was not shown that he dispensed

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

with the pottah," no objection was taken in the memorandum of appeal that the muchalka, which contained a statement that no pottah was necessary, had been neglected or misconstrued. The High

206. ——— *Consent of parties* – The High Court will not, even with consent of parties, pronounce a decree on the facts in a special appeal. KADAMBINEE DOSSEE *v.* DOORGA CHURN DUTT . . . . . Marsh, 4

S. C. DOORGA CHURN DUTT *v.* KADUMBINEE DOSSEE . . . 1 Hay, 25

207. ——— *Inference of*

WOOMA MOYEE BURMONYA *v.* KUNUCK CHUNDER MOOKERJEE . . . . . 17 W. R., 418

Even though it is not an inference, the High Court itself would have drawn, provided the Judge was at liberty to draw it. MAHOMED MANOO BHOOYAH *v.* MAHOMED ASAROOLLAH CHOWDHRY [17 W. R., 349

KALEE DOSS ACHARJEE *v.* KHETTRO PAL SINGH ROY . . . . . . 17 W. R., 472

208. ——— *Practice — Interference with finding of facts on second appeal.*— As a general rule, the High Court will not interfere with the finding of facts by the lower Appellate Court on second appeal, save on some very special ground, for instance, where such a finding of facts as appears to be necessary under the peculiar circumstances of the case has not been satisfactorily arrived at. GOLUCK NATH *alias* RAKHAL DAS CHUTTOPADHYA *v.* KIRTI CHUNDER HALDAR [I. L. R., 16 Calc., 645

209. ——— *Ground for set-*

210. ——— *Finding of fact, unsupported by reasons.*—The High Court is not bound, in second appeal, by a finding of fact of a lower Appellate Court, when such finding is not supported by any reason. PURSHOTAM SAKHARAM *v.* DURGOJI TUKARAM . I. L. R., 14 Bom., 452

211. ——— *Finding of the Court of first instance without reasons given where contrary conclusion has been come to by the District Judge.*—The District Judge having expressed an opinion and recorded a finding without discussing the several grounds on which the Subordinate Judge came to a contrary conclusion,—*Held* that the finding of the District Judge ought not to be accepted. MADHAV SHANBHOG *v.* VENKATASH MANJAYA . . . I. L. R., 16 Bom., 540

212. ——— *Finding of fact unsupported by reasons—Defect in judgment of lower Appellate Court.*—Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as

[20 W. R., 267

SAGE *v.* MACKAY & Co . . 2 Hay, 463

BEHAREE LALL NAEK *v.* SREERAM ROY [20 W. R., 259

See KRISTO GOBIND KUR *v.* GUNGA PERSHAD SURMA . . . . . 23 W. R., 266

PUTSAHEE KOOER *v.* SHEO PERSHAD RAM OOPADHYA . . . . . 24 W. R., 61

CHAND MONEE DOSSEE *v.* OBHOY CHURN MAL [24 W. R., 289

HUNSA KOOER *v.* SHEO GOBIND RAOOT [24 W. R., 431

GOBINDO CHUNDER MOULICK *v.* MUDHCOSUDUN MOULICK . . . 25 W. R., 550

DHOONDH BAHADOOR SINGH *v.* PRIAG SINGH [17 W. R., 314

KEWAL KANDOO *v.* OMRAO SINGH [25 W. R., 166

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

215. ———— *Error in law—Partnership.*—Where a Subordinate Judge held, from the fact of one person carrying on a business firm and appearing to the world to be the only person carrying it on, that there could be no other person in partnership with him, he was considered to have committed an error which materially affected his decision on the merits, and was a good ground for special appeal. SHOOBUL CHUNDER KULIFAH *v.* KOYLASH CHUNDER MAL . . 14 W. R., 23

216. ———— *Finding on speculative reasoning.*—A finding of fact arrived at upon reasons purely speculative amounts to a mistrial which can be set aside by the High Court in special appeal. MAHOMED AIZADDI SHAHA *v.* SHAFFI MULIA . . . . 8 B. L. R., 26

217. ———— *Improper assumption of, and inference from, facts.*—A finding of a fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in favour of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. SURBESWAR GHOSE *v.* CHOTO ABIZOLLAH MANDAL [8 B. L. R., Ap., 78 : 17 W. R., 213

218. ———— *Judgment founded on errors of fact.*—The High Court reversed on special appeal a judgment which was founded on many errors of fact and sent it back for a re-trial. POORNO CHUNDER CHATTERJEE *v.* CHUNDER COOMAR ROY. . 24 W. R., 171

219. ———— *Omission to consider important portions of the evidence—Finding based on statements, not on evidence.*—The lower Court, in its judgment, having omitted to make any mention of certain important documents or their bearing on the terms of a tenancy which were in question,—*Held* that, the lower Court having presumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted. *Held* also that the finding of the lower Court as to the plaintiffs' claim being barred by limitation, being based on statements without referring to any evidence to establish them, could not be accepted. Case sent back for reconsideration and fresh decision. APPA KALOA NAIK *v.* MALLU . . L. L. R., 16 Bom., 477

220. ———— *Decision of Judge not based on evidence given in the case—Finding of fact when binding in second appeal.*—In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants, (2) that the plaintiff had no power to enhance, (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the sheri or private lands of an inamdar

a reasonable rent, the High Court in second appeal was bound by that finding. *Held* that the case should be remanded for proper enquiry. No doubt, if the appeal in the District Court were conducted as if all the facts recorded by the Subordinate Judge were admitted, the plaintiff could not in second appeal question those facts. But it did not appear that it was admitted that the distinction drawn between sheri and khata tenants was correct or that every khata tenant, as such, exercised the rights described by the Subordinate Judge. Under the

221. ———— *Civil Procedure Code (Act XIV of 1882), ss. 584, 585—Findings of fact distinguished from inferences or conclusions of law—Inference of law which the facts found were insufficient to justify.*—It is well settled that a Court of second appeal, for the purpose of considering the weight of the evidence, is not competent, according to ss. 584 and 585 of the Civil Procedure Code, to entertain a question as to the soundness of a finding of fact by the Court below. The first Court's decision as to the effect of the evidence must stand final as to the facts. But the soundness of conclusions may involve matter of law, and may be questioned by a Court of second appeal. A conclusion was drawn by an Appellate Court affirming the judgment of the first Court that the defendant had accepted as a binding obligation upon him a mortgage executed by his mother, with whom he was a sharer by inheritance in the property charged. A higher Appellate Court, on a second appeal, decided that these conclusions were not warranted by the facts found, and reversed that judgment. *Held* that the third Court had not exceeded its powers under the

122, followed. RAMGOPAL *v.* SHAMSKHATON [I. L. R., 20 Calc., 93 L. R., 19 I. A., 228

222. ———— *Inference drawn from finding of fact.*—It is open to the Court in second appeal to question the soundness of an inference drawn from a finding of fact. *Ram Gopal*

SPECIAL OR SECOND APPEAL—*continued.*

5 GROUNDS OF APPEAL—*continued.*

v. *Shamshhaton, I. L. R., 20 Calc*, 93, referred to. KRISHNA KISHORE NEOGI v. MAHOMED ALI [3 C. W. N., 255

223. ———————— *Finding of*

be accepted in second appeal as a legal finding on it. GOVIND v. VITHAL . I. L. R., 20 Bom., 753

224. ———————— *Finding on the existence of custom or usage, mainly based on irrelevant matters—Evidence Act (I of 1872), s 13—Mistrial—Remand*—In suits by a landlord for ejectment of purchasers from raiyats having only a right of occupancy on the ground that the holdings of such raiyats were not transferable without the landlord's consent, the defendants pleaded custom or usage in support of the transfers Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage In second appeal the High Court, upon an examination of the evidence relied on by the lower Court of appeal, and on reference to s. 13 of the Indian Evidence Act (I of 1872), *held* that, the finding of that Court on the existence of the usage having been mainly based on irrelevant matters, the appeal was not properly tried, and the case must be remanded for re-trial. *Womes Chunder Chatterjee* v *Chundee Churn Roy Chowdhry, I. L. R., 7 Calc., 293,* referred to. PALAKDHARI RAI v. MANNERS [I. L. R, 23 Calc., 179

225. ———————— *Proof of custom—Misconception as to mode of proof*—If a decree appealed against is based on wrong views of the law of evidence, or on a misconception of the canons which the Privy Council and the High Court have defined as to how a special custom should be proved, the High Court will interfere in second appeal. DESAI RANCHODDAS VITHALDAS v. RAWAL NATHUBHAI KESABHAI I. L. R, 21 Bom., 110

In another case the Court on second appeal did not consider it open (where the lower Court had found the existence of a custom) to arrive at an independent finding as to whether the evidence established the existence of such custom BAI SHRINIBAI v. KHARSHEDJI NASARVANJI MASALAVALA . . . I. L. R., 22 Bom , 430

226 ———————— *Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Procedure in the second Court of appeal—Civil Procedure Code (1882), ss 568, 584, 585, and 587*—In a second appeal the High Court set

the issues not tried before, and came to findings of fact on that evidence. *Held* that the lower Appellate Court tried the case, not as an original case, but as an appeal, and acting under the powers given to it took fresh evidence. *Held* that on second appeal the High Court is precluded by the Code of Civil Procedure from going into facts, and that restriction of power is not confined only to cases where evidence is taken in the first Court. *Gopal Singh* v. *Jhakri Rai, I. L. R., 12 Calc., 37,* followed. *Balkishan* v *Jasoda Kuar, I. L. R., 7 All , 765,* referred to. *Hinde* v *Brayan, I. L R., 7 Mad , 52,* not followed BENI PERSHAD KUARI v. NAND LAL SAHU . I. L. R., 24 Calc., 98

227. ———————— *Enhanced rent on irrigated land—Implied contract.*—A zamindar tendered to raiyats on his estate pottahs providing (*inter alia*) for the payment of rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. This had not been sanctioned by the Collector under the Madras Rent Recovery Act, s 11, but it was found that it had been paid by the raiyats for many years The Court of first appeal held on this finding that there were implied contracts on the part of the raiyats to pay it. *Held* that the finding as to the existence of an implied contract to pay the enhanced rent was a finding of fact, and must therefore be accepted on second appeal SRIPARAPU RAMANNA v. MALLIKARJUNA PRASADA NAIDU . . . I. L. R., 17 Mad., 43

228. ———————— *Civil Procedure Code (1882), ss 584 and 585—Inference of law which the facts found are insufficient to justify*—Where the lower Appellate Court arrives at a conclusion which is an inference based upon an erroneous view of law, the judgment is open to question in second appeal. *Lachmeswar Singh* v. *Manuar Hossein, I L R , 19 Calc , 253 L R , 19 I. A , 48; Ram Gopal* v *Shamskhaton, I L R , 20 Calc., 93 · L. R , 19 I A , 228,* referred to. ISHAN CHUNDER DAS SARKAR v. BISHU SIRDAR

[I. L. R., 24 Calc , 825
3 C. W. N., 665

(c) EVIDENCE, MODE OF DEALING WITH.

229. ———— Evidence generally—*Error*

the law would raise, he commits error in law which the High Court can correct in special appeal. When a Judge decides without legal evidence, he commits an error in law. SUBNOMOYY v. LUCHMEEPUT DOOGUR . . 9 W R., 338

230. ———————— *Assumption made without evidence*—Where an assumption is made by the Court without any evidence, that is an

SPECIAL OR SECOND APPEAL—*continued.*

5. GROUNDS OF APPEAL—*continued.*

error of law warranting a special appeal. HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . 23 W. R., 519

231. ———— *Drawing un-* [illegible]

232. ———— *Civil Procedure Code, s. 584—Substantial error in a first Appellate Court's finding without any evidence to support it.*—The Court of first instance dismissed the suit upon the ground that the right which it was brought to establish had been taken away by a [illegible]

a second appeal, set aside this finding, there having been no proof that the compromise was to the infant's detriment, and affirmed the decree of the first [illegible] sub-s. (c), of the Civil Procedure Code. HEMANTA KUMARI DEBI *v.* BROJENDRO KISHORE ROY CHOWDHRY . . . I. L. R., 17 Calc., 875 [L. R., 17 I. A., 65

233. ———— *Error in legal conclusion or inference from evidence.*—In a suit to enforce a right to share in the profits of a ferry, the defendant set up an exclusive title and adverse possession. *Held* that, the decision that the defendant's possession had been adverse having been an inference from a fact in the Courts below, the correctness of this as a legal conclusion to be drawn or not was a question open to second appeal, and the High Court was not precluded from deciding to the contrary. LACHMESWAR SINGH *v.* MANWAR HOSSEIN [I. L. R., 19 Calc., 253 L. R., 19 I. A., 48

234. ———— *Omission of Appellate Court to consider presumption of facts material to case.*—When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in evidence, and materially affecting the decision of the case, that is such an omission and defect (ss. 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue. NILATATCHI *v.* VENKATACHALA MUDALI [1 Mad., 131

S. C. ANONYMOUS . 2 Ind. Jur., O. S., 13

235. ———— *Omission to draw inference.*—An omission of the Judge to draw an inference [illegible] PUNCHANUN . . . . 20 W. R., 505

236. ———— *Documentary evidence—Construction of document or inference to be drawn from its term—Civil Procedure Code, s. 584—Question of law.*—The question of what is the proper inference to be drawn from the terms of a document is a question of law within the meaning [illegible]

237. ———— *Omission to consider evidence—Error in decision on the merits.*—Every Judge of a question of fact is bound to take into consideration all the allegations and proofs [illegible] defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. GUNEE BISWAS *v.* SHREGOPAL PAUL CHOWDHRY . . . . 8 W. R., 395

238. ———— *Decision of lower Court as to credit to be given to particular proofs.*—It is the province of the Court which has to decide issues of fact to determine the amount of credit to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. MUTHRA DOSS *v.* MAGH SINGH . 2 N. W., 207

239. ———— *Weight of reasons given for decision.*—No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. DOORGA CHURN SETT *v.* SHAMANUND GOSSAIN . . . 12 W. R., 378

Or as to the worth of testimony. MACKENZIE *v.* JOWAHIR MAHTOON . . . 25 W. R., 137

240. ———— *Weight of evidence—Discretion of Court under Act XL of 1858.*—Weight of evidence is not a point on which the High Court can interfere in special appeal, nor will it interfere with the discretion of the Judge in not allowing a person to represent a minor. DHOONDE BAHADOOR SINGH *v.* PRIAG SINGH [17 W. R., 314

241. ———— *Giving credit to evidence.*—Where the lower Appellate Court has dealt with the evidence on both sides, has weighed it, and come to the conclusion that one side ought to be believed, the giving in the course of his observations a bad reason for believing it is not a ground of special appeal. SHEO GOLAM SAHOY *v.* MOHADEO LALL SAHOO . . . . 18 W. R., 110

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

242. ———————— *Difference between lower Courts on questions of evidence* —

right. TARA PROSUNNO MOZOOMDAR *v.* BISHONATH SIRCAR . . . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R., 482

243. ———————— *Ground for*

MACKENZIE *v.* JOWAHIR MAHTOON [25 W. R., 137

244. ———————— *Erroneous dealing with evidence.*—Whether or not a lower Appellate Court commits such an error in dealing with a case on the evidence before him as would make his conclusion on the facts bad in law, if he does not treat the evidence otherwise than reasonably, he gives no room for special appeal. MOHUR MATOON *v.* UMATUM . . . . 18 W. R., 499

245. ———————— *Improper mode of dealing with evidence—Remand.*—On special appeal it appearing that the Judge had dealt with the evidence in the case in an improper manner, it was pointed out, where he had committed errors and the case was remanded, that he might pass a fresh decision upon it. RAM DAS SAHA *v.* MANMAHINI DASI . . . . . 7 B. L. R., Ap., 4

246. ———————— *Judgment showing want of consideration of evidence* —A judgment which shows on the face of it want of due consideration of evidence and the introduction of foreign matters into the case may be brought up before the High Court in special appeal. SOORAJ KANT ACHARJE *v.* KHOODEE NARAIN MANNA 22 W. R., 9

KOOLDEEPNARAIN SINGH *v.* RUMMON SINGH [22 W. R., 278

247.

cedure Code it is competent for the High Court

nesses or documentary proof upon capricious or unsustainable grounds, or has stated no intelligible

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

reasons for arriving at its findings of fact, the High Court may take notice of all such matters in second appeal. *Futtema Begam* v. *Mohamed Ausur, I. L. R., 9 Calc., 309, Assanullah v. Hafiz Muhammad Ali, I. L. R., 10 Calc., 931,* and *Lal Mahomed Bepari* v. *Shoila Bewa, 11 C. L. R., 104,* referred to *Per* PETHERAM, C.J.—The High Court

takes in law, and does not extend the operation of cl. (*a*). The term "procedure" in cl. (*c*) means the practice followed by the Courts in the trial of cases, and cannot be construed as including the mental process by which a Court comes to a con-

jects of second appeal, and a judgment of a Court of first appeal which falls short of due compliance with the various clauses of s. 574 is essentially defective, and may properly be made the subject of complaint in second appeal under s. 584. *Ramnarain* v. *Bhawanidin, Weekly Notes, All., 1882, p. 104,* and *Sheoambar Singh* v. *Lallu Singh, Weekly Notes, All., 1882, p. 158,* referred to. The word "procedure" in cl. (*c*) of s. 584 must be

when the Court of first appeal, while adjudicating with due compliance with the provisions of s. 574, arrives at conclusions upon the merits ignoring any steps essential for justifying those conclusions, or

SPECIAL OR SECOND APPEAL—*continued.*

5. GROUNDS OF APPEAL—*continued.*

where such conclusions are based upon evidence inadmissible by law, or proceed upon an erroneous view of the legal effect of any material part of the evidence, or are arrived at under a misconception either of the rules of evidence or of any other law, such conclusions, though they purport to be distinct findings of fact, would lay the judgment of the lower Appellate Court open to second appeal under cl. (c) of s. 584, so long as the error was substantial enough to have possibly affected the justice of the case upon the merits. NIVATH SINGH *v.* BHIKKI SINGH. BHIKKI SINGH *v.* NIVATH SINGH

[I. L. R., 7 All., 649

248. ——— *Finding on issue of fact remitted—Civil Procedure Code, 1882, ss. 565, 566, 568.—Held* by the Full Bench (TYRRELL, J., dissenting) that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh* v. *Bhikki Singh I. L. R., 7 All., 649,* referred to *Per* PETHERAM, C.J., and TYRRELL, J.—Ss. 565 and 566 [illegible]

hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per* STRAIGHT, J.—S. 587 of the Civil Procedure Code does not mean that the provisions of [illegible]

p. 159, referred to *Per* TYRRELL, J.—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, in so much as the appeal may not be entertained on "grounds" of fact, but under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated [illegible]

sufficient for that purpose. In cases where the Court, still acting under s. 566, has been obliged in the absence of evidence on the record to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court,—the term "finding" being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and

not of an award of decision of the issue before the Court. BALKISHEN *v.* JASODA KUAR

[I. L. R., 7 All., 765

249. ——— *Findings of fact—Procedure of the High Court.*—Where the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been [illegible] course of [illegible] with any [illegible] by the [illegible] *v.* MAHOMED AUSUR . . . I. L. R., 9 Calc., 309

250. ——— *Question of fact—Findings on evidence*—The finding of a fact by a lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. GURU DAS DEY *v.* SAMBHUNATH CHUCKERBUTTY

[3 B. L. R., A. C., 258

251. ——— *Giving undue* [illegible]

252. ——— *Error in law—Rejection of evidence.*—There is a material difference between a case in which a Judge has assigned one bad reason for believing or disbelieving a particular piece of evidence, while he has given one or [illegible] case an Appellate Court can interfere on special appeal HURO PROSAD ROY *v.* WOMATARA DEBEE

[I. L. R., 7 Calc., 203: 8 C. L. R., 449

253. ——— *Error in procedure—Finding of fact by lower Court not accepted by High Court where the District Judge, in consequence of a mistake as to a date, was biassed in dealing with the defendant's evidence.*—Where a Judge, under a mistake, thought that a bond, which was really dated 19th November 1883, was dated 5th November 1886, and consequently treated the depo[illegible]

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

"false," — *Held* that, as the Judge must have been biassed by the strong opinion so formed as to the defendant's untruthfulness in dealing with the rest of the defendant's evidence, there was such a substantial error in the procedure as ought to preclude the High Court from accepting the Judge's finding as conclusive upon the point in dispute Decree reversed, and the case sent back for fresh decision on the merits on the evidence as it stood. *Hemanta Kumari Debi* v. *Brojendro Kishore Roy Chowdry, I. L. R., 17 Calc., 875 L. R., 17 I. A., 69,* referred to. VIRBHADRAPPA v. MAHANTAPPA

[I. L. R., 15 Bom., 670

254. ——— *Error in dealing with question of admissibility of evidence and burden of proof* —*Per* MAHMOOD, J.—It is the duty of the Court, when dealing with second appeals and in considering the conclusions at which the lower Appellate Courts have arrived, to consider whether

defendant and that defendant denies the title and asserts that the plaintiff has no title at all. WALI AHMAD KHAN v. AJUDHIA KANDU

[I. L. R., 13 All., 537

255. ——— *Suit for ejectment —Proof of title—Inference of title from acts of ownership—Finding of lower Court on such question—Mixed question of law and fact—Finding of fact.*—In an ejectment suit the evidence of the plaintiff's title to the property consisted of evidence of acts of user from which the Court was asked to infer ownership in the absence of proof of a better title by the defendant. Upon review of the evidence

legal inference to be drawn is certain, the High Court in second appeal may correct erroneous conclu-

an English lawyer is this Would a Judge withdraw the case from a jury on the ground that there was no evidence of the question to be found upon, such as adverse possession or title, to go to them? or would be, on the other hand, on certain facts being estab-

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

Lachmeswar Singh v. *Manowar Hossein, I. L. R., 19 Calc., 253 : L. R., 19 I. A., 48,* and *Ram Gopal* v. *Shamskhaton, I. L. R., 20 Calc., 93 L. R., 19 I. A., 228,* referred to RAJARAM v. GANESH HARI KABKHANIS . . . I. L. R., 21 Bom., 91

256. ——— *Misdirection — Ground of special appeal—Error of law.*—The

RAJO KOER . . . . 5 C. L. R., 94

257. ——— *Disregard of evidence.*—Where the lower Appellate Court's judgment was not based on the whole evidence on the

ABDUL ROHMAN v. SOFY MIKHAYESH SAHEBA

[24 W. R., 293

MOHUN SINGH v. JUGBUTTY KOOER

[24 W. R., 297

258. ——— *Disregard of evidence—Error in law.*—A complete disregard of

ANUND CHUNDER CHUCKERBUTTY v. RUTNESSUR DOSS SEN . . . . . 25 W. R., 50

259. ——— *Irregular dealing with evidence* —Where an Appellate Court ignores the great body of evidence on the record and places reliance on what can be shown either to be no evidence at all or which points almost exclusively the other way, and where it lays down, as positive dicta of law, points which are not law, the High

260. ——— *Improper dealing with evidence.*—In this case, departing from its general rule in special appeals not to disturb the finding of fact arrived at by the Court below, the

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

case for re trial. SHIBO SOONDUREE DOSSEE *v.* CHUNDER KANT GHOSE . . 21 W. R., 217

AMEER BEPAREE *v.* HURREE MOHUN KURMOKAR [23 W. R., 87

261. ——— *Improper and erroneous dealing with evidence—Error in law.*—The investigation of a case upon a portion of the evidence, excluding the other portion under a mistaken impression that it was not legal evidence [illegible]

KUCHA TEWARI [3 B. L. R., A. C., 108: 11 W. R., 482

262. ——— *Partial consideration of evidence.*—It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. DEO SURUN POORY *v.* MAHOMED ISMAIL . . . 24 W. R., 300

263. ——— *Ground for setting aside decision on facts.*—The lower Appellate Court has quite as much authority to decide upon facts as the Court of first instance, and the High Court is not at liberty to interfere with verdicts setting aside judgments of the Court of first instance, simply because such judgments are more detailed or even more satisfactory on the evidence. DOIBO CHUNDER ROY *v.* WOOMA MOYEE DEBIA [19 W. R., 321

264. ——— Documentary evidence—*Reasons for rejecting documentary evidence.*—The reasons of a Judge for not giving any weight to documents offered as evidence cannot be questioned in special appeal. MUNEE DUTT SINGH *v.* CAMPBELL [11 W. R., 278

But *see* SUROSUTTY DOSSEE *v.* UMBIKA NUND BISWAS . . . . 24 W. R., 192

265. ——— *Finding as to sufficiency of documentary evidence.*—*Per* BAYLEY, J.—The omission in the first Court to enquire or specify in the judgment as to whether a pottah, which is admittedly 100 years old, and which is supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the pottah is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the interference of the High Court in special appeal. *Per* GLOVER, J.—The question as to proper custody is not in issue, the Judge having found the pottah proved by the evidence of witnesses. BUDDIOODDEEN *v.* GOLAM PEER . . . . . . 17 W. R., 279

266. ——— *Error of Judge in not giving proper effect to evidence.*—In order to support a contention that the judgment of the lower Appellate Court is erroneous in law because the Judge has failed to give proper effect to the documentary evidence adduced, it is necessary for the special appellant to show not only that the evidence is calculated to support certain conclusions, but that these conclusions alone flowed from it. SHAM NARAIN *v.* COURT OF WARDS . . . 20 W. R., 197

267. ——— *Finding as to* [illegible]

[8 W. R., 356

268. ——— *Finding as to genuineness of document.*—A decision that a document was not genuine cannot be interfered with on special appeal. TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R. 462

269. ——— *Use of probabilities against direct evidence.*—Where the lower Appellate Court merely on the appearance of a document discarded the evidence of witnesses who testified to the making and signing of it, the High Court [illegible] 21 W. R., [illegible]

270. ——— *Erroneous and unnecessary presumption of fact.*—Where the Court concluded against the genuineness of a document on a presumption erroneous or one which did not necessarily arise, his decision was set aside on special appeal. AKJOO BIBEE *v.* KOONJO BEHAREE LALL [10 W. R., 288

WISE *v.* RUBAA KHATOON . 19 W. R., 299

GOPAL CHUNDER GHOSE *v.* TINCOWREE MUNDUL [19 W. R., 349

MEHER BANOO *v.* KERAMUT ALI 22 W. R., 403

271. ——— *Comparison of signatures in unusual manner leading to erroneous conclusion.*—Where the lower Appellate Court relied on a comparison between the signature in a mortgage-deed and the signature in a vakalatnama, and it appeared in special appeal that there were very considerable discrepancies between the signatures, the [illegible] case for retrial. PHOODEE BIBEE *v.* GOBIND CHUNDER ROY . . . . . 22 W. R., 272

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

272. ———— *Receipts for rent—Comparison of signatures—Credibility of evidence*—In a suit for rent the defendant pleaded payment and put in evidence receipts for the rent claimed. The Court of first instance disbelieved this evidence and gave a decree for the plaintiff.

273. ———— *Receipts for rent—Civil Procedure Code, 1859, s. 372—Error in investigation of case.*—In a suit for arrears of rent the defendant pleaded payment and filed receipts The Collector distrusted the receipts and gave a

appeal reversed the decree and gave a decree in

of 1859, and was therefore ground of special appeal. MOHUN CHUNDER DHUR v. KIDGE

[Marsh, 381: 2 Hay, 419

274. ———— *Misapprehension of, and irregular dealing with, evidence by Appellate Court—Ground for reversing decision.*—Where the lower Appellate Court misapprehended the documentary evidence, mistook the statements of witnesses and without recording clearly its reasons for doing so sent for documents which had not been put in evidence before the first Court, and also came to the conclusion that certain documents whose au-

275. ———— *Error in law—Misconstruction of document*—The misconstruction of a document is an error in law sufficient to form a ground of appeal ODIT NARAIN v MAHESHUR BUX SINGH . Agra, F. B., 52: Ed. 1874, 39

276. ———— *Misconstruction of document—Error on facts.*—Where the Court in recording the words of a document on which it relies puts one term for another, it is a misconstruction "affording ground for special appeal," but where for reasons given it places a particular boundary mark in a particular spot, its decision, even though wrong on the facts, would not be a misconstruction unless incompatible with the wording of the document. KALEE CHURN PATTUR v. CHUNDER CHURN MUNDUL . . . . . . 9 W. R., 366

277. ———— *Misconstruction of documents.—Per* AIKMAN, *J.—Semble*—That a ground of appeal to the effect that the lower Appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. RUDR PRASAD v. BAIJNATH . . I. L. R, 15 All., 367

278. ———— *Question of fact—Erroneous use of admission by lower Courts.*—The High Court, in special appeal, interfered with

279. ———— *Mistake as to meaning of evidence—Misconstruction of document.*—The misconstruction of a document which is the

280. ———— *Error in construction and dealing with sale certificate*—A Judge is bound to give full effect to the terms of a sale certificate, and when he proceeds to limit the effect of that certificate by certain inferences and

281. ———— *Construction of depositions of witnesses.*—The construction of the deposition of witnesses is not a question of law, and therefore not a ground of special appeal HIMMUT ALI KHADIM v. NYAMUTOOLLAH KHADIM

[23 W. R., 250

Upholding on appeal, NIAMUTOOLLAH KHADIM v. HIMMAT ALI KHADIM . . 22 W. R., 519

282. ———— *Construction of document—Question of fact.*—Where the conclusion of the lower Appellate Court rested, not only upon the contents of a document involving the question of its

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

correct construction, but also upon all the facts of the case and the whole conduct of the parties,—*Held* that it was not open to special appeal. BUNOSHEE DHUR MAHATA *v.* MUDHOO SOODUN CHOWDHRY [23 W. R., 408

283. ———— *Decision without sufficient evidence.*—In a suit on a kabuliat, the Court of first instance found that the kabuliat had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorized to sign it. The Judge on [illegible] ground of special appeal. SHAM CHAND BYSACK *v.* BUNGO CHUNDER CHATTERJEE [Marsh., 556: 2 Hay, 663

284. ———— *Finding of* [illegible] be interfered with by the High Court in special appeal. SHEO DYAL SINGH *v.* HODGKINSON [24 W. R., 342

285. ———— *Omission to record opinion on evidence.*—[illegible] appeals. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH . . . . . W. R., 1864, 367

HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal under the Letters Patent the decision of KEMP, J., in NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . 22 W. R., 510

286. ———— *Entry in account book*—*Error in law.*—The improbability of [illegible] dence with regard to an entry in the plaintiff's day-[illegible]

287. ———— *Documents improperly admitted.*—Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there was held to have been no proper trial of the case. The High Court on special appeal remanded the case. BOIKONATH PAKOORE *v.* RUBBICK LALL MITTER . 9 W. R., 274

PURAN CHUNDER CHATTERJEE *v.* GRISH CHUNDER CHATTERJEE . . . 9 W. R., 450

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

288. [illegible] ground of special appeal. SREEKANT GHOSE *v.* BHUWAN CHUNDER SEN . . 24 W. R., 13

289. ———— *Finding as to materiality of evidence or witnesses.*—Though a Judge has a right to say that in the absence of a witness he considers material he cannot give the plaintiff a decree, yet where he stated that unless a certain witness (from whom the plaintiff had got a conveyance which it was necessary for him to prove) attended [illegible] no right [illegible] in law an[illegible] DHUN BA[illegible] [illegible]

290. ———— *Discrediting witnesses for general reasons*—*Error in law.*—For the lower Appellate Court to discredit witnesses merely for general reasons not affecting the particular credit of any individual deponent is to commit an error of law which can be the subject of a special appeal. SHEO PURSHUN PANDEY *v.* BRUN PANDEY [24 W. R., 251

291. ———— *Disbelief of witness as interested party.*—A special appeal will not lie merely on the ground that the lower Appellate Court has disbelieved a witness by reason of his being an interested person or for any other reason within its discretion. DWARKANATH DOSS BISWAS *v.* MUDDUN MOHUN CHUCKERBUTTY [6 W. R., 293

292. ———— *Omission to give reasons for believing witnesses disbelieved by lower Court.*—The omission of a lower Appellate Court to give its reasons for believing witnesses disbelieved by the first Court does not constitute a ground of special appeal. LUCKHEE MONEE DOSSIA *v.* RAJKISHORE PAUL . 4 W. R., 100

Nor the omission to give reasons for confirming the decision of the lower Court. SHAMEE MOHAMED *v.* PRODHAN PALEE . . . 5 W. R., 178

293. ———— *Omission to give reasons for believing witnesses.*—No general rule can be laid down as to when the reasons should be stated by an Appellate Court for believing one set of witnesses rather than another; and the omission of a lower Appellate Court to state such reasons is not a ground for special appeal. SHUMSHEROODDY *v.* JAN MAHOMED SIKDAR . . . 21 W. R., 260

MUKDOOMUNNISSA *v.* NOKHY SINGH [24 W. R., 206

294. ———— *Omission to remind witness of former contrary statement*—*Reference to statement in judgment.*—When witnesses under examination make statements which are contrary to statements previously made by them, the

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

Court ought to draw their attention to the contradiction; but an omission to do so does not make the judgment bad in law, because he has remarked on those contrary statements in his judgment SHAM LALL *alias* SHAMA *v.* ANUNTEE LALL [24 W. R., 312

295. ———— Putting onus of proof on wrong party — Irregularity affecting merits—Error in law.—A suit instituted in the Court of the Principal Sudder Ameen was transferred under s. 6 of Act VIII of 1859 to the Court of the Munsif, who took further evidence, and decreed in favour of the plaintiff. The defendant appealed

which was waived by the plaintiff not requiring the

v NAROSHANKAR CHANDRO SHANKAR [4 Bom., A. C., 98

296. ———— Admission or rejection of

297. ———— *Order under s 20, Stamp Act XVIII of 1869—Discretion—Ground of special appeal* —A District Court refused to allow under Act XVIII of 1869, s 20, an insuffi-

A. C., 94, commented on GAMBHIRMAL *v.* CHEJMAL [10 Bom., 406

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

298. ———— *Error in admission of secondary evidence* —Whether secondary evidence is admissible in the place of primary is a question for the determination of the Court which

299. ———— *Refusal to admit secondary evidence of lost deed.*—All that it would be right for the Court to require for the pro-

300. ———— *Refusal to allow additional evidence—Discretion of Court.*—The parties in an appeal are not entitled as of right

KULPO SINGH *v.* THAKOOR SINGH [15 W. R., 429

301. ———— *Refusal to allow additional evidence—Civil Procedure Code, 1859, s. 355*—The High Court on special appeal cannot

302. ———— *Taking of additional evidence by Appellate Court—Civil Pro-*

[I. L. R., 11 Calc, 139

303. ———— *Omission to give reasons for admission of additional evidence.*—*A* sued *B* for rent, making *C* a defendant the suit was dismissed and *A* appealed. Then *C* sued *B* for rent, *A* intervened and was made a defendant, a decree was passed in favour of *C*, and *A* again appealed. On appeal the Subordinate Judge tried both suits on

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*concluded.*

[illegible]

Subordinate Judge. PRANNATH SANDYAL *v.* RAM COOMAR SANDYAL . . . 2 C. L. R., 33

[illegible]

MOITREE . . . . 17 W. R., 255

305. ——— *Rejection of evidence which ought to have been admitted—Ground for interference.*—The fact that the Judge may have rejected evidence which ought to have been received and considered does not warrant the High Court in interfering to set aside an order of such Judge. VENKATACHELLA CHETTI *v.* PARVATAMMAL [2 Mad., 418

6. OTHER ERRORS OF LAW OR PROCEDURE

(a) APPEALS

306. ——— **Appeal wrongly admitted** —*Orders and proceedings thereon without jurisdiction.*—Where an appeal was allowed from an order rejecting a review, and other acts and proceedings took place based on such illegal order, the High Court set aside all the proceedings in special appeal. JEWUN BIBEE *v.* BUDDUN MUNDUL [9 W. R., 489

307. ——— *Appeal heard and decided without objection where no appeal lay.* —Although Act XXIII of 1861, s. 26, barred an appeal from an order or decision passed in a suit instituted under Act XIV of 1859, s. 15, yet where [illegible]

308. ——— *Appeal heard ex parte without respondent being aware of hearing —Application for rehearing barred before he was aware of decree against him—Civil Procedure Code, ss. 560 and 584 (e)—Limitation Act, sch. II, art. 169 —Power of High Court to interfere on special appeal.*—Where an appeal was heard *ex-parte* by a lower Appellate Court and the decree of the Court of first instance reversed in the absence of the respondent, on whom notice of appeal had not been duly served, and who was not aware of the proceedings till after the time for applying for a rehearing under s. 560 of

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

[illegible]

309. ——— *Order rejecting appeal not presented in time without sufficient cause for delay—Discretion of Judge—Exercise of discretion not to be interfered with.*—Where an [illegible] that decision is contrary to law, that is, if the lower Court has exercised its discretion capriciously or arbitrarily or without proper legal material to support its decision. PARVATI *v.* GANPATI RONDAJI NAIK . . . I. L. R., 23 Bom., 513

(b) COSTS.

310. ——— **Interference with award of costs.**—The Court may interfere with the award of costs on appeal. JAFREE BEGUM *v.* AHMED HOSSEIN KHAN . . . 1 Agra, 270

311. ——— **Question of costs.**—There may be circumstances which would justify an appeal upon a mere question of costs. CHITRAYIL *alias* KUNATH AHMED KOYA *v.* IRUMANOM VITTIL KAVHAMATH HAJI . . . 3 Mad., 279

312. ——— *Mode of awarding costs.*—The question of how costs have been awarded is not a point for special appeal. BEEB PERSHAD *v.* DOORGA PERSHAD W. R., 1864, 215

313. ——— *Appeal from portion of decree relating to costs.*—*Held*, in con[illegible] decree which relates to costs in any case where any legal ground for special appeal is shown to exist. ASSA RAM *v.* KASHMEEREE DASS [Agra, F. B., 90: Ed. 1874, 68

314. ——— *Discretion in assessing costs—Civil Procedure Code, 1859, s. 187.* —Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by s. 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. KUPPUSVAMIAYYAN *v.* NANNUAYYAN [1 Mad., 74

315. ——— *Improper exer*[illegible]

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

particular law on the subject AMIRSAHEB HAFIZULLA *v.* JAMSHEDJI RUSTAMJI [4 Bom., A. C., 41

DESAJI LAKHMAJI *v.* BHAVANIDAS NAROTAMDAS [8 Bom., A. C., 100

316. ———————— *Improper exercise of discretion in awarding costs.*—There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of the lower Court as to costs To assess the defendant in a suit with the plaintiff's costs, when plaintiff's suit is dismissed for want of any cause of action, is irregular and unreasonable DANTULURI NARAYANA GAJAPATI RAZU GARU *v.* SUBAPPA RAZU [3 Mad., 113

317. ———————— *Erroneous order as to costs.*—The Court below gave the plaintiff a

[illegible]

318. ———————— *Error in improper exercise of discretion as to costs* —Where the first Court's discretion is improperly exercised in the matter of costs, the error may be rectified in regular appeal, but, if this is not done by the lower Appel-

[illegible]

319 ———————— *Order in discretion of lower Court* —Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs,—*Held* that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order the rule, as laid

[illegible]

Reversing on appeal under the Letters Patent the decision in MOHENDRO NATH MOJOOMDAR *v.* FUTTICK PAROOE . . . . 24 W. R., 319

ACHUMBIT SINGH *v.* KUNHYA LAL MOHAJUN [7 W. R., 208

(c) DISCRETION, EXERCISE OF, IN VARIOUS CASES.

320. —— — Order for security for costs—*Appeal struck off in default—Absence of error in law.*—When the Civil Procedure Code gives to a Court of regular appeal a discretionary power, and that discretionary power has been fairly exercised,

SPECIAL OR SECOND APPEAL —*continued.*

6 OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

it is no good ground of special appeal that a wiser exercise of the discretion would have led to different

[illegible]

held land in Jhansi, and been refused that permission, the Court would have interfered in special appeal. GOPAL KHUNDER RAO *v.* DEOKEE NUNDUN [6 N. W., 172

321. ——— Exercise of discretion not to be interfered with—*Civil Procedure Code (Act XIV of 1882), s 584—Limitation Act (XV*

[illegible]

322. ——— Execution of decree—*Discretion of Court executing decree—Civil Procedure Code, 1859, s. 207.*—It is entirely in the discretion of

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

the Court executing a joint decree to make arrangements under Civil Procedure Code, s. 207, regarding its execution by one of the decree-holders and to take necessary steps for the protection of the interests of [illegible]

[illegible] W. R., 200

323. —— Refusal to grant fresh summons—*Delay.*—An exercise of the discretion [illegible]

[illegible]

324. —— Order for payment of de- [illegible]

[illegible]

were hardly sufficient even to cover the interest and did not provide for the interest and penalty conditioned in case of default.—*Held* that they had exercised the discretion vested in them by s. 194, Act VIII of 1859, arbitrarily and without due caution, and their order could be interfered with and set aside on special appeal. HUR GOBIND *v.* HURKHO [1 Agra, 116

JAYEEE BEGUM *v.* AHMED HOSSEIN KHAN [1 Agra, 270

325. —— Refusal to allow application to amend plaint—*Discretion to allow amendment of plaint.*—A lower Court has discretion *to permit, or not, the filing of a petition to amend a* plaint, and its refusal is no ground for special appeal. WATSON & Co *v.* NIDHOO DIOWAR 10 W. R., 87

326. —— Interest, Award of—*Interest on decree, Discretion of Court in allowing.*—The Court executing a decree has a discretion in allowing interest, which will not be interfered with in special appeal. PARES NATH MUKHOPADHYA *v.* KISTOMOHAN SAHA [3 B. L. R., Ap., 105 : 12 W. R., 50

(d) ISSUES, OMISSION TO DECIDE.

327. —— Omission to consider material facts—*Removal of appeal heard by a Subordinate Judge to District Judge—Act XIV of 1882, s. 566.* If on second appeal it is found that certain material facts, having an important bearing upon a question at issue in the suit, have been omitted to be considered by the lower Appellate Court the High Court will interfere with the decision of the lower Appellate Court, even though it be on a question of fact. DEVA NATH BANERJEE *v.* HARI DASI [I. L. R., 11 Calc., 400

328. —— *Omission to try question of possession when material.*—When the plaintiff sued as owner of property in dispute and in which the defendant admitted the plaintiff's possession, but qualified it by saying that the plaintiff held as zur-i-peshgidar or mortgagee, the omission of the Appellate Court to try the question of possession is an error of law in the investigation which the Court will take notice of on special appeal. GOPAL ROY *v.* TEKAET ROY . . . . . 8 W. R., 333

329. [illegible]

[illegible]

the merits and a ground of special appeal. SALUJI KESRAJI *v.* RAJSANGJI JALMSANGJI [3 Bom., 169 : 2nd Ed., 162

330. —— Omission to inquire into defendant's plea—*Suit for confirmation of title* [illegible]

[illegible]

sold it to the defendant's vendor, the omission of the Court to inquire into the alleged transfer and see whether it was genuine, and, if so, whether it was a real or only a colourable transaction, is an error in the decision which is a ground of special appeal. BHUGOBUTTY *v.* BIKRAMAJEET SINGH . 8 W. R., 477

331. —— Omission by Appellate Court to decide on the question of ownership—*Suit before Subordinate Judge depending on issues of ownership as well as on a rent-note.*—Where it appeared that an issue was raised as to ownership, and that both parties at the trial before the Subordinate Judge gave evidence on such issue (although the claim was based, in the main, on a rent note), and the lower Appellate Court omitted to find on such issue,—*Held,* reversing the decrees of the lower Appellate Court, that it ought to have found on the issue as to ownership. RAMKOR GOPALJI *v.* OANDABAM . I. L. R., 10 Bom., 545

(e) JUDGMENTS.

332. —— Reversal of judgment without reasons—*Difference of opinion as to facts.* A special appeal lies from an Appellate Court's judgment, in which the decree of the lower Court is reversed without any reasons given for differing as to facts. GOBURDHUN *v.* SADHOO . 1 W. R., 244

333. —— Omission to state reasons in judgment—*Civil Procedure Code (Act XIV of 1882), ss. 574, 584.*—The fact that the judgment [illegible]

[illegible]

BAIDYANATH MANDUL . I. L. R., 12 Calc., 199

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued*

334. ———— *Finding of fact —Civil Procedure Code, 1882, s 204*—A finding unaccompanied by the reasons for it, as required by s. 204 of the Code, is not a conclusive finding of fact binding on a Court of second appeal KAMAT v. KAMAT . . . I. L. R., 8 Bom., 368

335. ———— The Judge decided ... his he l calc occupied by certain suits brought for the same property, in which he was non suited *Held* that it was

336. ———— *Error of procedure—Civil Procedure Code, 1859, s 359*—A lower Appellate Court's omission to give reasons cannot be considered a ground for special appeal when it has not produced error or defect in the decision upon the merits Where a lower Appellate Court has omitted to state reasons, and it appears to the High Court that reasons should have been stated, the proper course is to retain the case on special appeal, but to return the proceedings and require the omission to be supplied. DOOLEE CHUND v. OOMDA BEGUM . . 18 W. R, 473

337. ———— Omission to state points for decision and reasons in judgment—*Omission to follow direction in Civil Procedure Code, 1859, s 359*—S. 359, Act VIII of 18 9,

338. ———— Omission to give reasons

[4 Bom., A. C., 105, 109

339 ———— Decision on point not contested.—In a suit by a talukhdar, where the dispute was whether certain land which the plaintiff held was what he was entitled to hold as lakhiraj, under a sanad which he produced, and as to the genuineness of which no question was raised, the lower Appellate Court indicated that it considered the sanad not to be genuine *Held* that this was an

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

[19 W. R., 267

340. ———— Decision for plaintiff on ground not alleged by him—*Civil Procedure Code, 1859, s 350—Error not affecting merits.*—In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower Appellate Court, in confirming the decision on the substantial issue raised, went further, and found that one of the defendants was plaintiff's raiyat, contrary to the allegation set up by the plaintiff himself,—*Held* in special appeal that the error did not affect the merits of the case or the jurisdiction of the lower Court; and the High Court could not therefore interfere under s. 350 of the Code of Civil Procedure. RAM CHUNDER CHATTERJEE v. RAM JEEBUN DASS . . . 14 W. R., 141

341 ———— Decision founded on issues not raised in the suit—*Error of law.*—In a suit for the recovery of land upon an alleged lease found to be not genuine, the defendants set up a sale by plaintiff's father. The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff, the son of the vendor. *Held* that the validity of the sale not having been questioned by the plaintiff, who had rested his case

(*f*) LOCAL INVESTIGATIONS

342. ———— Order directing local in... cting a ... discre... f right. ... L., 141

BYKUNT NATH SEIN v. PEAREE MONEE DASSEE [1 W. R., 196

POORNO PERSAD ROY v CHUNDER NATH CHATTERJEE . . . . 1 W. R., 249

RAJKISHEN MOOKERJEE v HURO MOHUN MOOKERJEE . . . 5 W R., 248

343 ———— Order as to local inquiry

unless very strong grounds are shown for the necessity of the inquiry RASH BEHAREE SINGH v SAHEB ROY . . . 12 W. R., 76

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

344. ——— **Omission to direct local investigation** *Error in law.*—It is not an error in law in the investigation of a case where the Courts below do not direct a local investigation of their own motion when they are not asked by the parties to do so. MACDONALD *v.* MUNAR ROY
[B. L. R., Sup. Vol., 358 : 3 W. R., Act X, 153

345. - **Local inquiry in suit as to enhancement of rent**—*Discretion of Judge to order local inquiry in suit to contest notice of enhancement—Order of Judge.*—In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local inquiry, merely because he incidentally states such an inquiry to be the best source from which to obtain reliable evidence upon the point of rates. Nor will a special appeal lie on [illegible]

1 Hay, 220

GUNGADHUR SUNNAPUTTY *v.* HERALOLL SEAL
[Marsh, 60

346. – **Irregularity in local inquiry**—*Civil Procedure Code, 1859, s. 180—Appointment of improper officer*—Though s. 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry, non-compliance with this requirement of law is not *per se* a ground of special appeal. RAMDOSS KOONDOO *v.* NILKANTO LHUR . . . . 8 W. R., 6

347. ——————— *Disregard of report on local investigation—Disputed boundary—Grounds of appeal—Civil Procedure Code (Act XIV of 1882), s. 584.*—The Court of first instance accepted as correct a boundary line mapped by an Ameen, dividing the estates of the opposite parties. The lower Appellate Court, after remanding the suit for a second local investigation and report, determined to disregard the second return, *which differed from the first, and affirmed the judgment.* Both parties having appealed, the High Court, dissatisfied as to this disregard of the second return, decided to hear the appeal as a regular one, examined the evidence, and reversed the judgment of the Court below. *Held* by the Privy Council that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction; and that it had no power to hear the appeal as a second appeal there not having been in the proceedings below any error or defect, within the meaning of s. 584 of the Civil Procedure Code, which contained the only grounds of second appeal. LUKHI NARAIN JAGADEB *v.* JODU NATH DEO
[I. L. R., 21 Calc., 504
L. R., 21 I. A., 39

348 —— - *Hearing and deciding case after granting commission for local investigation, without awaiting return of such commission—Ground of appeal—Civil Procedure Code, s. 584.*—Where a Court on the application of a party or otherwise has issued a commission for a local investigation, it is a substantial error in procedure and therefore a ground of special appeal, under s. 584 of the Code of Civil Procedure, if the Court proceeds to hear and determine the case *without having the return of such commission before it.* MADHO SINGH *v.* KASHI SINGH
[I. L. R., 16 All., 342

(g) MISTAKES.

349. ——— **Mistake in account**—*Review, Application for.*—A mistake of account not being an error in law or procedure is not a ground for special appeal. The remedy lies in an application for review. RAM KANTH ROY CHOWDHRY *v.* KALEE MOHUN MOOKERJEE . . 22 W. R., 310

PROSUNNO COOMAR DUTT *v.* CHYTUNNO CHURN BIDYALUNKAR . . . 25 W. R., 74

350. ——— **Error in description of defendant as a minor**—*Appeal by guardian treated as appeal by minor*—The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant. *Held* that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal SHAMA CHARAN GHOSE *v.* TARAK NATH MUKHOPADHYA
[3 B. L. R., Ap., 115

351. [illegible]

[W. R., [illegible] 16 : 1 Ind. Jur., O. S., [illegible]
1 Hay, 220

S. C. JUGOBUNDOO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . . . Marsh, 52

ESSAN CHUNDER DUTT *v.* PRANNATH CHOWDHRY
[Marsh, 270 : 2 Hay, 236

AKBUR ALLY *v.* HOSSAN ALLY
[1 Ind. Jur., N. S., 101 : 5 W. R., Mis., 29

(h) MULTIFARIOUSNESS.

352 ——— **Misjoinder of causes of action**—Misjoinder of causes of action is not alone a valid ground of special appeal. SHUNKER PATTEH *v.* LALA SHEO CHURN LAL
[2 N. W., 443 : Agra, F. B., Ed. 1874, 238

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

353. —— *Absence of* ...

Bebee . . 1 W. R., ...

354. —— *Material irregularity.*—Where a plaint containing separate causes of action on the part of distinct plaintiffs, though but one prayer—*viz.*, for the delivery up of certain nekasi papers—was filed and tried as a single suit, the Court trying the case was held to have committed not a mere technical irregularity, but an ...

355. —— Objection on ground of misjoinder.—Where an objection on the score of misjoinder is disallowed by the first Court, but rightly ...

(i) PARTIES.

356. —— Adding parties—*Discretion of Court.*—The exercise of the discretion a Court had to add parties under s. 73, Act VIII of 1859, ...

PORAN MUNDUL MOLLAH *v.* SHAM CHAND GHOSE [1 W. R., 228

357. —— *Error in adding party as plaintiff—Civil Procedure Code, 1877, s. 591.*—In a suit for rent where the defendant ...

1877. GOOGLEE SAHOO *v.* PREMLALL SAHOO [I. L. R., 7 Calc., 148

358. —— *Unappealed order—Civil Procedure Code, 1882, s. 591—Order making person respondent.*—S. 591 of the Code enables the Court, when dealing with an appeal from a decree, to deal with any question which may arise as to any error, defect, or irregularity in any ...

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

359. —— *Erroneously making intervenor party to suit.*—An error in allowing an intervenor to be made a party to the suit is one of procedure only, and is not a ground of special appeal, unless it is shown that the decision of the case was affected by such error. NUNHOO MAHTOON *v.* TEELOCO KOOER . 18 W. R., 313

360. —— Refusal to add party— ...

exercised capriciously, or it appears absolutely necessary to add the party. JAGADAMBA DASI *v.* HARAN CHANDRA DUTT [10 W. R., 108: 6 B. L. R., 526 note

361. —— Misjoinder of parties—*Irregularity producing error or defect on the merits.* ...

brought before another Court than which would otherwise have had cognizance of it was calculated to produce error or defect in the decision on the merits and therefore a ground of special appeal. GUNGA RAI *v.* SAKEENA BEGUM . 5 N. W., 72

362. —— Death of party—*Filing plaint in name of dead person—Irregularity.*— ...

363. —— Objection of non-joinder of parties—*Error causing wrong decision.*—The objection of non-joinder of parties cannot be made a ground of special appeal unless the want of parties has caused a wrong decision to be given. HEERA LALL CHOWDHRY *v.* BISTOO LALL CHOWDHRY [22 W. R., 288

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*j*) REMAND.

364. ——— **Order of remand irregularly made**—*Error in law—Civil Procedure Code, 1859, s. 351.*—It is an error in law for a lower Appellate Court to remand a case except in accordance with s. 351 of the Civil Procedure Code. A special appeal will lie against a decree remanding a suit. NANABHAI NAROTOMDAS *v.* RAVSHET GOVINDSHET [6 Bom., A. C., 156

365. ——— *Remand of case under s. 351, Civil Procedure Code, 1859—Irregular procedure.*—A special appeal does not lie merely because the lower Appellate Court remanded a case under s. 351 of Act VIII of 1859, instead of calling for additional evidence under s. 355 without proof that the special appellant has been prejudiced. NOWCOWREE MUNDUL *v.* MOOKTA BIBEE [2 W. R., 181

Or instead of framing issues on which the case might be tried. JUGGOBUNDHOO HALDAR *v.* SHEONARAIN MITTER . 20 W. R., 188

But *see* RAM KANT PANDEY *v.* GUNESHEE KOONWUR 6 W. R., 47

366. ——— *Improper remand under s. 351, Civil Procedure Code, 1859—Error in procedure.*—Where a lower Appellate Court, instead of keeping a case on its file and either calling for further evidence or remitting issues under s. 354 of Act VIII of 1859, improperly remanded it under s. 351, but its decision on the merits was not prejudiced by the error in procedure, the High Court refused to interfere in special appeal. BULDEO PERSHAD *v.* GOLAB KHAN . . 6 N. W., 101

GHASI SINGH *v.* BUDH SINGH . 7 N. W., 103

367. ——— *Civil Procedure Code, 1859, s. 351.*—It does not necessarily follow, when a lower Appellate Court remands a suit under s. 351 of Act VIII of 1859 instead of s. 354, that the order of remand is void and reversible in special appeal. Where, however, a lower Appellate Court, directing certain persons to be made parties to the suit, erroneously remanded it under s. 351 for the trial of a particular issue,—*Held* that, if the case went back under s. 351, inasmuch as the error, by restricting the Court of first instance to that particular issue and thus leaving the finding of the lower Appellate Court on other portions of the case final, might have produced error in the lower Appellate Court's decision on the merits the decision should be reversed and the lower Appellate Court directed to remand the case under s. 354. GURBAS SINGH *v.* BIJAI SINGH . . 6 N. W., 114

368. **Irregularity in remanding case**—*Civil Procedure Code, 1859, ss. 352, 351.*—Where a Judge instead of remanding a case under s. 352 of Act VIII of 1859 when the Munsif had not disposed of the case upon any preliminary point, ought to have disposed of it under s. 354, keeping the case on his own file, and ordering the Munsif, after taking the necessary evidence and deciding any issue fixed by him, to send up his finding with the evidence to his Court and then proceeding to try the case as an appeal.—*Held* that the irregularity was not one which affected the merits of the case or the [illegible]

[illegible] W. R., 405

369. ——— *Error in trial of case.*—In a suit for a pottah, the Deputy Collector having failed to take the evidence of certain witnesses produced by the plaintiff for examination, the lower Appellate Court remanded the case with a view to the evidence being taken. This was done, and the case was re-tried by the Deputy Collector, who again dismissed the plaint. On appeal the decision was reversed. *Held* that the Judge may have been so far in error, in that, while remanding the case, he did not direct the lower Court to send the case back to him [illegible] been before the Judge in appeal), it would not warrant interference with his decision in special appeal. NUSSEROODDEEN HOSSEIN CHOWDHRY *v.* LALL MAHOMED PURAMANICK 13 W. R., 234

370. — **Improper dealing with remanded case**—*Re-hearing and decision of case on remand for particular purpose.*—The Court of Appeal directed a remand to try the issue on a plea of payment. The lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that, on this ground, its decision might be set aside on special appeal. MOLTAN ALLEE *v.* SHEW BUKSH [Marsh., 603

(*k*) REVIEW.

371. — **Order granting review**—*Order admitting review to correct error or omission.*—Where a lower Court with materials before it comes to the conclusion that a review which has been applied for is necessary to correct an evident error or omission or for the ends of justice, and grants the application accordingly, the order admitting the review is not open to be questioned in special appeal. SAHEBJAN BIBEE *v.* SYDUCK ALI . . 22 W. R., 298

But when a review is admitted on no grounds the order is open to question. KOLEEMOODDEEN MUNDUL *v.* HEERUN MUNDUL . . 24 W. R., 186

372. ——— *Admission of review on improper grounds.*—Where a review has been granted without proper ground, the High Court on special appeal can set aside the order and restore the former judgment. CHUNDER CHURN ADHIKARY *v.* LOODUYRAM DEB . . 25 W. R., 324

SPECIAL OR SECOND APPEAL —*continued*

6 OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

373. ——— *Grant of review on improper or insufficient grounds* —Where a Court has granted a review, the High Court will not interfere on appeal, though the grounds for granting the review were improper or insufficient. GURUMURTTI NAYUDU *v.* PAPPA NAYUDU [1 Mad., 164

See FUZZUL HOSSEIN *v.* ENAYET ALI KHAN [2 W. R., 268

374. ——— **Reviewing predecessor's judgment and reversing it on insufficient**

375. ——— **Order reviewing judgment**

doing so is not *per se* a ground of special appeal. GHOLAM HOSSEIN *v.* OKHOY COOMAR GHOSE [3 W. R., Act X, 169

376 ——— **Omission to correct error**

KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR [6 Bom., A. C., 238

AKBUR ALI *v.* MULLICK MUKHDOOM BUKSH [25 W. R., 63

(*l*) VALUATION OF SUIT.

377. ——— **Error in valuation**—*Error not affecting decision or jurisdiction of Court.*—An error of valuation, which does not affect the jurisdiction of the Courts in which a suit is tried, and does not lead to a defect in the decision on the merits, is not sufficient ground for interference in special appeal. KISTO CHURN MOJOOMDAR *v.* DWARKA NATH BISWAS . . 10 W. R., 32

378 ——— *Increase of costs to defendant.*—*Semble*—That an error in the

379. ——— *Dismissal of appeal for improper valuation* —The Civil Judge dismissed an appeal on the ground that the appellant fraudulently presented a stamp insufficient to cover the stamp duty properly payable by him on appeal, although the appellant offered to supply additional stamps to make up the proper amount. On special

of the High Court, and remanded the case for investigation on the merits. AMBALA RAMASAWMY IYENGAR *v.* MAHAMADALLY RAVUTAN . 5 Mad., 330

(*m*) WITNESSES.

380. ——— **Refusal to summon plaintiff as witness**—*Discretion of Court.*—It is within the discretion of a Judge to refuse to summon a plaintiff whom defendant desires to have before the Court as his witness, and that discretion will not be interfered with in special appeal unless shown to have been exercised illegally. INDRO LOCHUN GHOSE *v.* GRISH CHUNDER ROY CHOWDHRY [10 W. R., 134

381. ——— **Order as to party refusing to attend**—*Civil Procedure Code, 1859, s 170.*—*Discretion of Court.*—Under s. 170, Act VIII of 1859, it is discretionary with a Court to pass such orders as it thinks proper in regard to a party who disobeys its orders to attend, and its directions do not form a ground of special appeal. NARAIN DOSS *v.* MAHARAJAH OF BURDWAN. NARAIN DOSS *v.* MAHTAB CHUNDER . . . . 10 W. R., 174

382 ——— **Dismissal of suit on refu-**

required to do so. *Semble*—It might be otherwise had plaintiff since decree endeavoured to purge his contempt. JESHTA RAMJI SHETT *v.* AWAKER MULLANDEAGATA KUNHI . . 3 Mad., 299

383. ——— **Improper procedure in summoning party as witness**—*Civil Pro-*

KISTO COOMAR CHOWDHRY *v.* GOBIND COOMAR [W. R., 1864, 133

384. ——— **Improper interference on appeal with order of lower Court on refusal of party to attend as witness**—*Civil Procedure Code, 1859, s. 170.*—The first Court having decreed against the special res ground

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

of his refusal to come forward and give evidence after being summoned by the special appellant, the lower Appellate Court was not authorized by law (with reference to s 170, Act VIII of 1859) to come to a contrary decision, without insisting on the absentee's evidence being recorded, or giving any reasons for dispensing with it. BUKHSOOK *v.* HARUK CHAND SAHOO . . . . 1 W. R., 114

385 ———— Omission of witness to appear—*Auction-purchaser at sale in execution.*—In a case wherein lands were sold in execution, notwithstanding intervention, under s. 246, Code of Civil Procedure, by a plaintiff who claimed under a hibba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction purchaser had not appeared to give evidence. ABDOOL HUQ *v* AMEER ALI [8 W. R., 422

386. ———— Refusal of Munsif to fine recusant witness.—The refusal of a Munsif to inflict a fine upon recusant witnesses is no ground for special appeal. PRAN KRISTO DEO *v.* KALEE DOSS DEO . . . . . 7 W. R., 460

387. ———— Refusal to allow witness [illegible]

388. ———— Omission to record evidence of witnesses.—To enable an appellant in special appeal to succeed on the ground that the depositions of witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that, being present, application was duly made for their examination. SURM RAE *v.* UDHMAN RAE . 2 N. W., 209

389. ———— Refusal of lower Courts to send back commission after its return unexecuted.—*Where a commission to examine a* witness on behalf of defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused both by the first Court and the lower Appellate Court, the High Court in special appeal remanded the case for the issue of the commission, holding that the lower Appellate Court's refusal had been based on insufficient grounds JHOTEE SINGH *v* GOPAL SINGH 23 W. R., 457

390 ———— Adjournment for attendance of witnesses - *Civil Procedure Code (Act XIV of 1882), s 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court* [illegible]

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December On the day following the defendants produced certain witnesses and asked that they might be examined This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs. *Held per* PETHERAM, C J.—That the omission to examine the defendants' witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully *Per* GHOSE, *J.*—That although there [illegible]

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY [I. L. R., 20 Calc, 745 note

(*n*) MISCELLANEOUS CASES.

391. ———— Final order in regular appeal—*Civil Procedure Code, 1859, ss. 342, 372 —Question of fact—Exercise of discretion—Error in law*—The term "decisions passed in regular appeal" in s 372, Act VIII of 1859, might embrace orders rejecting or dismissing an appeal, although such orders were passed before an appeal was heard on the merits, and might not necessitate the preparation of a decree. GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN . . . 6 N. W., 173

392. ———— Appeal dismissed on default of appearance—*Refusal of postponement.* [illegible]

393. ———— Refusal to give decree on terms—*Discretion of Court.*—Though it would have been more satisfactory if the lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insuffi- [illegible] a de- [illegible] their [illegible] the [illegible] it cannot be said that the lower Appellate Court had committed an error in law in refusing to make such a decree. BOISTUB DOSS KOONDO *v* HUROO NARAIN HALDAR . . . 17 W. R., 408

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*concluded.*

394. ———— **Omission to apportion to every part of the land its own rent**—*Suit for enhancement of rent.*—In a suit for enhancement the omission of the Ameen or Judge to appropriate to every portion of the land which varies in quality its own rent is no ground of special appeal GOOROODOSS ROY *v.* HURRONATH ROY . W. R., 1864, 61

395. ———— **Irregularity in exercise of jurisdiction**—*Absence of error in decision.*—A Collector's decree, which is right on the merits, cannot be set aside on appeal, merely because of an irregularity in the exercise of the jurisdiction which he had in the case. CHUNDER KANT CHUCKERBUTTY *v.* ELIAS . . 5 W. R., Act X, 29

396. ———— **Giving relief inconsistent**

special appeal. BAMA SOONDUREE DOSSEE *v.* BAMA SOONDUREE DOSSEE . . 10 W. R., 133

397. ———— **Refusal to examine plaintiff's title on erroneous ground**—*Civil Procedure Code, 1859, s. 372—Defect in law in procedure.*

claimed, when in fact the deed showed he was no party to it, this constitutes a defect "in the procedure and investigation of the case producing error in the decision of the case upon the merits" within Act VIII of 1859, s. 372, and a special appeal will lie. ABDOOL SALAM *v.* IMBALOONISSA BEBEE [Marsh., 6: 1 Hay, 28

398. ———— **Failure to obtain certificate of administration after adjournment of case for that purpose**—*Dismissal of case*—

[I. L. R., 5 All., 555

SPECIAL OR SECOND APPEAL—*continued.*

7. PROCEDURE IN SPECIAL APPEAL.

Original Court with the memorandum of appeal. PITHATHI SINGH *v.* VENCATRAMANAYYAN [I. L. R., 4 Mad., 419

400. ———— **Extension of time for presentation of appeal**

[W. R., F. B., 146

On due cause being shown for delay. FLOWEST *v.* KOOTUB HOSSEIN [Agra, F. B., 100: Ed. 1874, 75

401. ———— **Recording findings unnecessary for disposal of case**

merely on the ground of non-joinder, the District

RAI *v.* BONOMALI LAHIRI I. L. R., 11 Calc., 544

402. ———— **Objections by respondent**—*Civil Procedure Code, 1859, s. 348 (1882, s. 561)*—S. 348, Act VIII of 1859, was as applicable to special as to regular appeals NARAYAN AYYAR *v.* LAKSHMI AMMAL . . . 3 Mad., 216

403. ———— *Right of respondent to urge objections under s. 348, Civil Procedure Code, 1859.*—In a special appeal, as well as in a regular appeal, it is competent for the respondent to show that points decided against him ought to have been decided in his favour. In an appeal in a suit for enhancement of rent, where the tenant is appellant and seeks to reduce the amount, the respondents may show, on other points of law, that it ought to have been enhanced beyond that which the decree gave him. HILLS *v.* ISHORE GHOSE Marsh., 151

[4 Mad., 102

404. ———— **Changing issues on special appeal**—A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court. AHMED MUNDUL *v.* SONAOOLLAH . . . . . 8 W. R., 5

405. ———— **Direction of trial of issue**—*Right of respondent to take objection—Civil Procedure Code, 1859, s. 372, and Act XXIII of*

SPECIAL OR SECOND APPEAL —*continued.*

7. PROCEDURE IN SPECIAL APPEAL —*continued.*

1861. s. 25.—Where an issue has been directed, and

[illegible]

[1 Mad., 250

406. ———— **Omission to determine material issue**—*Civil Procedure Code, 1877,*

[illegible]

determination to the Court of first appeal SHEO RATAN *v.* LAPPU KUAR . . I. L. R., 5 All., 14

407 ———— **Payment of stamp duty where not tendered in Court below**—Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal RAM KRISHNA GOPAL *v.* VITHU SHIVAJI 10 Bom., 441

408 ———— **Ground taken for first time on appeal**—*Ground arising out of facts alleged and admitted.*—In special appeal a new ground may be taken if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. KALIMOHAN CHATTERJEE *v.* KALI KRISHTO ROY CHOWDHRY

[2 B. L. R., Ap., 39 : 11 W. R., 183

409. ———— **Plea taken for first time on appeal**—*Facts stated in plaint necessary to*

[illegible]

410. — **Objection taken for first time in special appeal**—Where in a suit under the Madras Local Boards Act in the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27.—*Held* that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit. PRESIDENT, TALUKH BOARD, SIVAGANGA *v.* NARAYANAN I. L. R., 16 Mad., 317

411. ———— **New point raised in second appeal**—*Question of law.*—The High Court will allow, on second appeal, a new point to be raised for

[illegible]

412. ——— **Point of law raised for first time in second appeal.**—In a suit by a mortgagee for possession of the mortgaged land, the mother of the deceased owner claimed to remain in possession of it in virtue of her right to maintenance. At the hearing of the second appeal, a claim was made on her behalf not merely to maintenance, but to a share in the property as mother of the last owner. The point had not been taken in the lower Courts, nor was it one of the grounds of appeal. *Held* that it could not be taken for the first time in second appeal. It

[illegible]

[I. L. R., 18 Bom., 679

413. ———— **New point**—*Discretion of*

[illegible]

lower Courts, or unless it is a pure point of law going to the question of the jurisdiction of the lower Courts and capable of being determined without the consideration of any evidence other than that on the record, and even if it falls within the above exception, it is purely discretionary with the Court whether to consider it or not. FAKIR CHAND AUDHIKARI *v.* ANUNDA CHUNDER BHUTTACHARJI I. L. R., 14 Calc., 586

414. ———— **Objection that mesne profits ought to have been settled in execution and that no suit lies**—*Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 244.*—A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that, if the amount were not paid within fifteen days, the tenant should be ejected under s. 52, Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession. The tenant appealed and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of

[illegible]

of the case, was the officer who, in the first instance, would have had to determine the matter in the execution department, there was at most only an error of procedure and no exercise of jurisdiction by the Munsif, which he did not possess, and that, upon the

SPECIAL OR SECOND APPEAL —*continued*

7. PROCEDURE IN SPECIAL APPEAL —*continued.*

authority of the decision in *Purmessuree Pershad Narain Singh* v *Jankee Kooer, 19 W. R., 90,* this could not be made a ground of objection on appeal. *Held* also that, the point being one that was not raised in the pleadings or before either of the lower Courts, and being a point which went exclusively to the jurisdiction of the Court, it could not be raised on second appeal. AZIZUDDIN HOSSEIN *v.* RAMANUGRA ROY . . I. L. R., 14 Calc., 605

415. Objection to parties—*Non-joinder of parties.—Held* by MUTHUSAMI AYYAR, [illegible]

416. —— Objection taken for first time on appeal—*Necessity of notice to quit—Objection as to want of parties—Practice—Suit for specific performance.*—An objection as to the necessity of notice to quit is one which may be taken in second appeal. An objection that certain of the defendants should not have been made parties to a suit for specific performance, because they were not [illegible]

417. —————— Where an objection was taken in the first Court that a notice to quit ought to have been served through the Court, and on second appeal the objection was based on the ground that it should have been served by proclamation and beat of drum under rule 4 framed by the Local Government under the provisions of the Bengal Tenancy Act, it was *held* that the objection so taken could not be entertained in second appeal. LOKE NATH GOPE *v.* PETAMBAR GHOSE 3 C. W. N., 215

418. ——— Question of limitation.—Where the question of limitation was raised for the first time in second appeal,—*Held* that it could not be decided in favour of the plaintiff. SHIBAPA *v.* DOD NAGAYA . . . I. L. R., 11 Bom., 114

419. ———— *Plea raised at the hearing which was not taken in the memorandum* [illegible]

appeal, when it has not been taken in the memorandum of appeal. RAM KISHEN UPADHIA *v.* DIPA UPADHIA . . . I. L. R., 13 All., 580

420. ———— *Civil Procedure Code, ss. 541, 542, 584, 585, 587—Plea of limitation as to first Appellate Court taken orally on second appeal.*—An appellant in a second appeal raised orally at the hearing a plea not taken in his memorandum of appeal to the effect that the respondents' appeal to the lower Court (where they had been [illegible]

Dipa Upadhia, I. L. R., 13 All., 580, approved. AHMAD ALI *v.* WARIS HUSAIN [I. L. R., 15 All., 123

421.——— Argument on point not before raised—*Civil Procedure Code, 1859, s. 374.* [illegible]

422 ——— Objection on appeal not raised before remand—*Question of law.*—The High Court is bound to notice an argument on a point of law raised in special appeal, even though it was not raised before the Court on a previous occasion, when it passed an order of remand. DARIMBA DEBIA *v.* NILMONEE SINGH DEO . 15 W. R., 180

423. [illegible]

facts entirely inconsistent with their statements there. BUNSEE LALL *v.* AOLADH AHSAN 22 W. R., 553

424. ———— *Raising new issue—Changing original allegations.*—A party cannot be permitted to change in special appeal the [illegible]

425. ———— *Changing ground* [illegible]

MOJOOMDAR *v.* SARODA CHOWDHRAIN. [1 W. R., 283

427 ———— *Changing ground of action.*—When a plaintiff has ineffectually sued for a declaration that certain property was his own self-acquired property, he cannot in special appeal

SPECIAL OR SECOND APPEAL —*continued.*

7 PROCEDURE IN SPECIAL APPEAL —*continued.*

ask for a declaration of his title to a moiety of the property as a member of a joint Hindu family. DHUN KRISTO ROY *v* HURO CHUNDER ROY [5 W. R., 197

428. ———— *Claim through widow in right of dower—Allegation of right by inheritance*—The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobala from a Mahomedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower. *Held* that the defendants could not, in special appeal, set up for the first time that the widow was entitled to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no inquiry asked for into the state of the family, or whether any and what share came to the widow. AMBIKA CHARAN DUTT *v.* NADIR HOSSEIN [2 B. L. R., A. C., 258

S. C. UMBIKA CHURN DUTT *v.* NADIR HOSSEIN [11 W. R., 133

429. ———— Rules for special appeal—*Sufficiency of evidence on the record, Question as to*—A case which is tried in special appeal is subject

Court may be dealt with in special appeal without a remand or re-hearing. JOY RAM ROY *v.* OMRAO ROY . . . . 12 W. R., 431

430. ———— Omission after favourable finding of law to appeal against adverse

431. ———— Power of High Court to draw inference of fact from evidence.—The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. DWARKADAS LALUBHAI *v* ADAM ALI SULTAN ALI . . . 3 Bom., A. C., 1

432. ———— Mode of obtaining record of facts where ground of appeal is misconduct of Judge in not hearing a pleader.—The Court on special appeal is bound to take the facts from the Judge's statement. Where, therefore, a party desires or intends to make the misconduct of

SPECIAL OR SECOND APPEAL —*continued.*

7. PROCEDURE IN SPECIAL APPEAL —*continued.*

Court, he to that therwise, le of the l. RAM is PORA-MANICK . . . . 3 C. L. R., 23

433. ———— Appeal to Chief Court, Punjab—*Civil Procedure Code, 1882, s. 584—Questions of fact.*—An appeal from an Appellate Court to the Chief Court of the Punjab is not limited, as such appeals are under the Civil Procedure Code, 1882, s 584; but evidence may be dealt with, and questions of fact are open for decision. BUDHA MAL *v.* BHAGWAN DAS [I. L. R., 18 Calc., 302

434.

435. ———— Power of High Court as to facts—*Appeal from order of remand—Civil Procedure Code, 1877, s. 562, and s. 588, cl. 28.*—On an appeal from an order under s. 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under s. 588, cl. 28, is to consider whether on the findings of fact by the lower

436. ———— Effect on special appeal of recording further evidence by Appellate Court.

scribed in s. 353. LALLA HEERA LAL *v.* GOUREE BYJNATH PERSHAD . . . 4 W. R., 43

437. ———— *Civil Procedure Code, 1882, s. 568—Right to go into facts on appeal.*—The provision in s. 568 of Act XIV of

appeal, so as to allow the pleaders to go into the facts. GOPAL SINGH *v.* JHAKRI RAI [I. L. R., 13 Calc., 37

438. ———— *Right to examine evidence taken by lower Appellate Court under s. 355, Civil Procedure Code, 1859*.—The High Court is not entitled in special appeal to examine the evidence of a witness summoned by the lower Appellate Court under Act VIII of 1859, s. 355, which was not before the first Court, nor treat *the appeal as a regular appeal.* MAHOMED KAMIL *v.* ABDOOL LUTEEF . . 23 W. R., 51

Reversing decision in ABDOOL LUTEEF *v.* MAHOMED KAMIL . . . 20 W. R., 369

439. ———— **Right to go behind order of remand**—*Omission to apply for review of order.*—Where a suit was remanded for assessment of mesne profits on the principle laid down in a certain case, if the plaintiff was himself found to have cultivated the lands, and the first Court, finding that to be the fact, assessed the mesne profits on the principle laid down *in that case, but the* Judge reversed the decision on the ground of a later [illegible]

case. NURSINGH ROY *v.* ANDERSON [19 W. R., 125

See RAMKUVARBAI *v.* DAMODHAR NARBHERAM [6 Bom., A. C., 146

440. ———— **Objection to previous order in the case to be taken in memorandum of appeal**—*Civil Procedure Code, ss. 562, 591.*— [illegible]

441. ———— **Order adding defendant**—*Civil Procedure Code (1882), s. 32.*—Where an order adding a defendant under s. 32 of the Code of Civil Procedure was not appealed against and no objection was taken thereto in the memorandum of appeal from the decree in the suit in which it was passed, an oral objection taken in appeal to such order was disallowed. *Tilak Raj Singh* v. *Chakardhari Singh, I. L. R., 15 All., 119,* referred to. BANSI LAL *v.* RAMJI LAL [I. L. R., 20 All., 370

442. ———— **Power of High Court to deal with evidence**—*Necessity for remand—Evidence of existence of legal necessity.—Held* by PEACOCK, C.J., that the High Court has the power in special appeal, before remanding a case, to see whether there is any evidence on the record which would warrant a contrary finding to that already come to by the Judge below, and that it would be worse than useless to remand the present case to the Judge to find whether any necessity existed for the sale, when the Court sees that there is no evidence on the record to prove the existence of such necessity, and when the Judge has found that there was no necessity if he were to come to a contrary finding upon the evidence as it stands, his judgment would *be reversed upon special appeal as being a finding,* [illegible]

sufficient to enable the Court to come to a conclusion [illegible]

443. ———— *Civil Procedure Code, 1882, ss. 565, 566*—*Determination of case by High Court*—In a suit for pre-emption, based on the wajib-ul-urz of a village, the Court of first [illegible]

PETHERAM, C.J., and OLDFIELD and TYRRELL, JJ., that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence al- [illegible]

question need not be referred to the Court of first appeal. *Bal Kishen* v. *Jasoda Kuar, I. L. R., 7 All., 765,* referred to. *Per* STRAIGHT and BRODHURST, JJ., *contra. Bal Kishen* v. *Jasoda Kuar,*

SPECIAL OR SECOND APPEAL —*continued.*

7. PROCEDURE IN SPECIAL APPEAL —*continued.*

I. L. R., 7 All., 765, referred to. DEOKISHEN *v.* BANSI . . . . I. L. R., 8 All., 172

444. ———— Second appeal from order of remand—*Civil Procedure Code, s. 562—Effect of findings of facts and findings of law*—On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law

[I. L. R., 15 All., 413

445. ———— Appeal from order of an Appellate Court—*Civil Procedure Code (1882), ss 562, 588—Findings of fact of the Court below*—

Bibi, I. L. R., 15 All., 413, approved. TIKA RAM *v.* SHAMA CHARAN . I. L. R., 20 All., 42

446. ———— Determination of issues of fact by High Court—*Civil Procedure Code, ss. 565, 566, 587*—*Held* by the Full Bench that s. 587

same upon the evidence on the record, but the High Court in such cases must remit issues for trial to the lower Appellate Court. *Balkishen* v. *Jasoda Kuar, I. L. R., 7 All., 765,* and *Deokishen* v. *Bansi, I. L. R., 8 All., 172,* overruled on this point. GIRDHARI LAL *v.* CRAWFORD . I. L. R., 9 All., 147

447. ———— Power of High Court to

448. ———— Limitation

Roy, 2 B. L. R., A. C., 184, followed. CHUNDER DOSS *v.* BOSHOON LALL SOOKUL

[I. L. R., 8 Calc., 251; 11 C. L. R., 177

449. ———— Power of High Court to vary order for execution—*Giving relief not asked for.*—The High Court in second appeal should not vary the order for execution which had been passed in such a way as to give the decree-holder relief for which he did not ask. PROTAP CHUNDER DOSS *v.* PEARY CHOWDHRAIN

[I. L. R., 8 Calc., 174: 9 C. L. R., 453

450. ———— Decrees made without jurisdiction—*Suit cognizable by Small Cause Court*

[23 W. R., 445

451. ———— Objections under s. 567 raised for the first time in second appeal by plaintiffs—*Practice—Remand by lower Ap-*

452. ———— Filing one appeal from four separate decrees—*Amendment of appeal.*—In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor *X.* After the date of sale, but before the whole of the purchase money had been

and the District Court passed a decree in each appeal, dismissing *A*'s suit. *A* presented one second appeal, making *B, C, D,* and *E* parties thereto, against the four decrees of the District Court. *Held*

second appeal and the three more second appeals. CHATHU *v.* KUNSHAMED . I. L. R., 11 Mad., 280

SPECIAL OR SECOND APPEAL —*continued.*

7. PROCEDURE IN SPECIAL APPEAL —*continued*

453. ——— Change of pleading in appeal—*Practice.*—The plaintiff, alleging himself to be joint in estate with *A*, his granduncle, sued to [illegible] made [illegible] sequent [illegible] The [illegible] parate [illegible] clusive owner of the house, held the gift to the wife and the sale by her to defendant valid and dismissed the suit. [illegible] put forward in second appeal being totally different from that which was originally put forward and tried, the appeal should be dismissed. KANHIA *v.* MAHIN LAL . . **I. L. R., 10 All., 495**

454. ——— Omission to examine witnesses—*Second appeal, Objection on, on the ground of such omission*—A Subordinate Judge, [illegible] examined The defendant appealed to the District Judge At the hearing of the appeal the plaintiffs did not inform the Judge that some of their witnesses had not been examined, nor did he become otherwise aware of the fact. He reversed the lower Court's decree, being of opinion, on appeal, that the plaintiffs' evidence had not proved their case. The [illegible] be taken *Held* that there was no sufficient reason, [illegible] order to have a chance of a second trial. GULAM *v.* BADRUDIN . . . **I. L. R., 18 Bom., 336**

455. ——— Defective judgment of Appellate Court, reversing Munsif's decision on credibility of witnesses—*Practice*—*Procedure*—*Judgment, Form of.*—Case in which the High Court on special appeal, being of opinion that the judgment of the District Judge reversing [illegible]

456. ——— Objection to suit on ground of want of certificate—*Suit under Dekkan Agriculturists' Relief Act.*—An objection to a suit under the Dekkan Agriculturists' Relief Act on the ground that a proper certificate had not been obtained could, it was held, be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below. NYAMTULA *v.* NANAVALAD FARIDSHA **I. L. R., 13 Bom., 424**

457. ——— Change in nature of suit [illegible] property more than 12 years before suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged One of the members of the family who was in possession of the property to [illegible]

MUTTUSAMI *v.* RAMAKRISHNA
I. L. R., 12 Mad., 292

458. ——— Powers of Appellate Court—*Question of fact*—*Civil Procedure Code, 1882, ss. 584, 585.*—The limitation to the power of the [illegible]

GHOSE *v.* MOHENDRANATH PURKAIT
I. L. R., 17 Calc., 291
L. R., 16 I. A., 233

459. ——— Objection taken for first [illegible]

[illegible]

460. ——— Objection to jurisdiction on ground of wrong valuation of suit—*Suits Valuation Act (VIII of 1889), s. 11.*—The High Court held that it was not at liberty to entertain an objection taken for the first time on second appeal [illegible]

461. ——— Objection taken for first time in second appeal that preliminaries to suit had not been taken—*Practice.*—In a suit for a declaration of the plaintiffs' right to have their names registered as purchasers, an objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register,—*Held* that

SPECIAL OR SECOND APPEAL —*continued.*

7. PROCEDURE IN SPECIAL APPEAL —*continued.*

this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed. BHIKAJI BAJI *v.* PANDU

[I. L. R., 19 Bom., 43

462. ——— Objection based on point of law.—An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts. GAVDAPPA *v.* GIRIMALLAPPA . . . I. L. R., 19 Bom., 331

463. ——— Objection taken on appeal from final decree to order of remand not appealed from.—The contention that a map was admissible in evidence was held to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v. *Ramji, I. L. R., 14 Bom., 232,* and *Rameshar Singh* v. *Sheodin Singh, I. L. R., 12 All., 510,* followed. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA

[I. L. R., 23 Calc., 335

464. ——— Offer to pay stamp duty and penalty in second appeal not allowed.—An instrument which is not duly stamped will not be admitted on second appeal on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal. *Ramkrishna Gopal* v. *Vithu Shivaji, 10 Bom., 441,* referred to. LAKSHMANDAS RAGHUNATHDAS *v.* RAMBHAU MANSARAM . . . . I. L. R., 20 Bom., 791

465. ——— Wrong issue framed by lower Court—*Finding in judgment on the point raised by correct issue—Ground for remand.*—Where the lower Appellate Court framed a wrong [illegible]

466. ——— Amendment of plaint by putting new plaintiff on the record on second appeal.—Where plaintiff had sued as [illegible]

amended on second appeal by substituting the adopted son as plaintiff with one of the original plaintiffs as his next friend. SESHAMMA *v.* CHENNAPPA

[I. L. R., 20 Mad., 467

467. ——— Apportionment of mortgage-debt—*Question of apportionment first raised in second appeal—Practice.*—A plaintiff, who had purchased part of certain mortgaged property and sued for possession, obtained a decree ordering that he [illegible]

so in second appeal to the High Court. Under the circumstances, the High Court refused to interfere with the decree. The plaintiff had a remedy by suit for contribution. YADAO BABAJI SURYARAV *v.* AMBO . . . . I. L. R., 21 Bom., 567

468. ——— Appeal to lower Appellate [illegible]

paid a sufficient court-fee on his memorandum of appeal in that Court and up to the date of the hearing of the appeal in the High Court, though called upon to do so, had not made good the deficiency, it was *held* that the proper procedure was not to [illegible]

[I. L. R., 20 All., [illegible]]

469. ——— Objection as to improper admission of document in evidence.—An objection that a document which *per se* is not admissible in evidence has been improperly admitted in evidence cannot be entertained for the first time in second appeal. *Miller* v *Madho Das, I. L. R., 19 All., 76: L. R., 23 I. A., 106,* distinguished GIRINDRA CHANDRA GANGULI *v.* RAJENDRA NATH CHATTERJEE . . . 1 C. W. N., 530

SPECIAL COMMISSIONER.

——— Register prepared by—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R., 22 Calc., 112

SPECIAL COMMISSIONERS.

——— Jurisdiction—*Beng. Reg. III of 1828—Release of resumed lands—Mesne profits.*—In 1855 the Privy Council decided against the right of the Bengal Government to resume and re-assess [illegible]

SPECIAL COMMISSIONERS—*concluded.*

Commissioners The zamindar having appealed to [illegible]

SPECIAL COURT AT RANGOON.

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT
[I. L. R., 4 Calc., 667

SPECIAL DAMAGE.

See LIMITATION ACT, 1877, s 26 (1871, s 27) . . I. L. R., 1 Mad., 335

——— Allegation of—

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE, DEFAMATION, AND SLANDER

See CASES UNDER JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF.

See CASES UNDER RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.

See CASES UNDER SLANDER.

SPECIAL JUDGE.

See APPEAL—ACTS—BENGAL TENANCY ACT . . I. L. R., 17 Calc, 326

See BENGAL TENANCY ACT, s 102.
[I. L. R., 22 Calc., 244

See BENGAL TENANCY ACT, s 108.
[I. L. R., 21 Calc., 521

See DEKKAN AGRICULTURISTS' ACT, s. 3.
[I. L. R., 14 Bom., 387
I. L. R., 15 Bom., 30
I. L. R., 16 Bom, 128

See REVIEW—GROUND FOR REVIEW.
[I. L R., 15 Bom, 650

See REVIEW—POWER TO REVIEW.
[I. L. R., 19 Bom., 116
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——— Order of—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R, 16 Calc., 596
I. L R, 21 Calc., 776, 935
I. L. R., 23 Calc., 477
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SPECIAL JUDGE—*concluded.*

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 16 Calc, 596
I. L. R., 21 Calc., 935
I. L R., 18 Bom., 347
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I. L. R., 23 Calc, 723
I. L. R., 25 Calc., 34
I. L. R., 26 Calc, 556

SPECIAL LEAVE TO APPEAL.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

SPECIFIC APPROPRIATION.

See INSOLVENCY—ORDER AND DISPOSITION . 1 B. L. R., O. C., 114, 131
[2 B. L. R., O. C., 56

SPECIFIC PERFORMANCE.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[I. L. R., 12 Bom., 174
I. L. R., 15 *Calc.*, 211

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . 8 B. L. R., 89
[7 C. L. R., 577

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
[I. L. R., 14 Mad, 18
I. L. R., 18 Bom., 702
I. L. R., 19 Bom., 764

See JURISDICTION—SUITS FOR LAND—GENERAL CASES
[I L. R., 5 Calc., 82
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See CASES UNDER LIMITATION ACT, 1877, ART. 113 (1871, ART. 113).

See MANAGEMENT OF ESTATE BY COURT
[I. L. R., 15 Calc, 253

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS
[I. L. R, 20 Calc., 508
I. L. R., 18 Mad, 415
I. L. R., 27 Calc., 276

See PARTIES—PARTIES TO SUITS—CONTRACTS, SUITS ON
[I. L. R., 5 Bom., 177
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SPECIFIC PERFORMANCE—*continued.*

See PARTIES—PARTIES TO SUITS—SPECIFIC PERFORMANCE.
[I. L. R., 18 Mad., 415
I. L. R., 19 Mad., 211
2 C. W. N., 42
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See REGISTRATION ACT, s. 48
[I. L. R., 13 Mad., 324
I. L. R., 6 Calc., 534
I. L. R., 10 Calc., 710
I. L. R., 27 Calc., 468

See REGISTRATION ACT, 1877, s. 49
[1 B. L. R., F. B., 58
I. L. R., 12 Mad., 505
I. L. R., 13 Mad., 308
I. L. R., 14 Mad., 55

See CASES UNDER REGISTRATION ACT, 1877, s. 77 (1866, s. 83)

See SPECIFIC RELIEF ACT, s. 27.
[I. L. R., 1 All., 555

See VENDOR AND PURCHASER—BILLS OF SALE . . 2 B. L. R., P. C., 111

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 17 Calc., 919

See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER . . . 15 W. R., 44
[I. L. R., 24 Calc., 897
I. L. R., 21 Bom., 827

See VENDOR AND PURCHASER—TITLE
[I. L. R., 15 Bom., 657

——— of agreement to refer to arbitration.

See CONTRACT ACT, s. 28.
[I. L. R., 1 Calc., 42, 466

——— of contract to give in marriage.

See INJUNCTION—UNDER CIVIL PROCEDURE CODES I. L. R., 1 Calc., 74

1. GENERAL CASES.

1. ——— Remedies for breach of con-
tract
form
other
damag

12 W. R., 140

2. ——— **Requisites to entitle party to specific performance**—*Ability of plaintiff to perform his part of agreement—Absence of default.*—A Court of equity will not decree specific execution of an agreement in favour of a party who is not competent to perform his part of the agreement. To entitle a party to specific performance, he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. BUNOSEEDHUR MULLICK *v.* CALCUTTA AUCTION COMPANY . . 1 Hyde, 45

1. GENERAL CASES—*continued.*

RAM TUNOO KOONDOO *v.* MULLICK DOSSEE
[14 W. R., 336

3. ——— Readiness to perform

material parts of agreement

carry out the entire of his own part of the contract before he can call upon his adversary, through the instrumentality of the Court, to specifically execute the latter part of the agreement. VISHVANATH ATMARAM *v.* BAPU NARAYAN . 1 Bom., 262

4. ——— *Absence of delay in coming before the Court.*—Parties seeking specific performance of a contract should come to the Court for relief within a reasonable time. SAM *v.* APPUNDI IBRAHIM SAIB . . . . . 6 Mad., 75

5. ——— *Absence of laches—Right to damages.*—A suit for specific performance of a contract to sell land will not lie if the plaintiff neglects to enforce his rights for a long time (in this case three years) after his rights under the contract for sale accrued, and if he does not act up to a condition precedent to the sale to him. If he has any claim at all, it would be for damages against the person breaking the contract for loss sustained by the non-fulfilment thereof. PURBEAG SINGH *v.* KHEER SINGH . . . . . . 8 W. R., 280

6. ——— **Right to specific performance**—*Lapse of time—Agreement to compensate for mesne profits due—Surrender of land charges.*—The result of a long pending litigation was that the defendants were directed to pay wasilat for certain lands which they had possessed under an invalid lakhiraj claim. They subsequently entered into a compromise with the plaintiff, their zamindar, and

SINGH *v.* GOOROO DOSS ROY. PROTAP CHUNDER SINGH *v.* CHUNDER COOMAR ROY
[W. R., 1864, 76

7. ——— *Delay in bringing the suit—Specific Relief Act, s. 22—Joinder of a*

SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*continued.*

as the plaintiff had slept on his rights for nearly three years. *Held* that, although the principle of the [illegible] bringing [illegible] ought to [illegible] of their [illegible] Relief Act, yet the point not having been taken in the [illegible]

second appeal MOKUND LALL *v.* CHOTAY LALL [I. L. R., 10 Calc., 1061

8 ———————— *Performance of portion of agreement.*—*Per* PONTIFEX, J.—It is of the essence of specific performance that part only of an agreement should not be performed CUTTS *v.* BROWN . . I. L. R., 6 Calc., 328

S. C. in lower Court BROWN *v.* CUTTS [5 C. L. R., 487

and on appeal CUTTS *v.* BROWN [7 C. L. R., 171

9.———————— *Specific performance of part of contract and damages—Power of High Court*—The High Court could, under the Charter and Act VIII of 1859, grant specific performance of part of a contract and give damages for the breach of the remainder. In a suit for specific performance of a contract the cause of action is sufficiently shown by a statement of the terms of the contract, followed by the averment of the refusal of the defendant to perform it, with a readiness and willingness of the plaintiff to do his part in it UNUNTORAM DOSS *v.* RAMLOCHUN AITCH . . 14 W. R., O. C., 15

10 ———————— *Ascertainment of damages—Civil Procedure Code, 1859, s. 192—Specific performance as applied to partnerships*—The ascertainment of the amount of damages was a necessary preliminary to a decree under Act VIII of 1859, s. 192, for specific performance of a contract and payment of damages as an alternative in case of non-performance The application of the doctrine of specific performance to partnerships is governed by the same rules as those which govern it in other cases. There are only two classes of cases in which specific [illegible]

ment which has come to an end to carry on a joint adventure, and the decree that the agreement is valid, prefaced by the declaration that the contract ought to be specifically performed, is made merely as the foundation of a decree for an account. VIRDACHALA NATTAN *v.* RAMASAVAMI NAYAKAN [I. Mad., 341

SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*concluded.*

11 ———————— *Joint contractees—Right of one contractee to specific performance* [illegible]

12.———————— *Discretion of Court to give relief—Vendor selling land to third parties in breach of his contract.*—The fact that, subse[illegible]

such third parties, does not affect the question as to the propriety of the exercise by the Court of its discretionary power to enforce the contract GURUSAMI *v.* GANAPATHIA . I. L. R., 5 Mad., 337

13.———————— *Practice—Liberty to apply — Relief after judgment — Damages — Review—Alternative relief.*—On the 27th April 1886, a plaintiff brought a suit praying for specific performance of a contract, or in the alternative for damages, and on the 24th November 1886 obtained therein a decree for specific performance with the usual liberty to apply. On the 6th December 1886 the plaintiff discovered that it was out of the defendant's power to specially perform his contract, and he thereupon, on the 13th April 1887, applied to the Court which had granted the decree for re-hearing of the suit on the question of damages, asking that, in lieu of the decree for specific performance, a decree for damages, when assessed, might be entered up *Held* that he was entitled to ask for such relief. PEARISUNDARI DASSEE *v.* HARI CHARAN MOZUMDAR CHOWDHRY . I. L. R., 15 Calc., 211

2. SPECIAL CASES.

14 ———— **Agreement to purchase and payment of part of purchase money**—*Right of purchaser*—When there is an agreement to sell and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the said money. SHIB KISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY . 3 W. R., 103

But *see* RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . 3 W. R., 64

15. —— **Contract in respect of adjustment subsequent to decree**—*Act XXIII of 1861, s. 11*—A suit lay for specific performance of a contract in respect of an adjustment subsequent to, and for property beyond the decree, notwithstanding s. 11 of Act XXIII of 1861, which applied only to subject-matters relating to the decree RAM LOCHUN BUBRA *v.* MADHUB CHUNDER BUBRA [3 W. R., 118

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

16. ——— **Re-sale on purchase-money being unpaid**—*Delay in payment where no time is fixed.*—When the purchaser of an estate paid earnest-money, and no time was fixed for the payment of the balance, and the vendor re-sold the property within a week,—*Held* that the vendor was bound to have waited a reasonable period; that the second purchaser took nothing; and that the first purchaser was entitled to a decree for specific performance MUTHUR ALI *v.* SHEO SAHOY SINGH

[W. R., 1864, 281

17. ——— **Agreement to exchange land**—*Remedy of seller on refusal to give land.*—Where a piece of land was sold in consideration of receiving in exchange another piece of land which was not given,—*Held* that the seller's remedy, having regard to the terms of the contract made, was not by a suit to get back the land sold, but by a suit for damages for breach of contract, or by a suit for the specific performance of the contract or so much of it as was left unperformed. NASIR ALI *v* GOVERNMENT

[3 Agra, 394

18. ——— **Contract for lands for which others were to be exchanged**—*Suit for damages.*—Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, defendant binding himself to make over to plaintiff other lands in exchange,—*Held* that, if defendant failed to make over the lands last mentioned, plaintiff might sue him for specific performance or for damages, but could not sue for the excepted lands. KISHOREE DEBIA *v* JUGUNNATH ACHARJEE

[9 W. R., 269

19. ——— **Refusal to act wholly on deed of partition**—*Suit for rights as they existed before deed.*—Where a partition deed has been made and

[illegible]

wholly or in part to their respective shares. NUKCHAD SINGH *v.* HUNOOMAN DUTT SINGH

[10 W. R., 69

21. ——— **Contract for appointment of a** [illegible]
—In [illegible]
Act [illegible]
ber, [illegible]
lecto [illegible]
beha [illegible]
to a [illegible]
amou [illegible]
requi [illegible]
The defendants' secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for [illegible]

22. ——— **Agreement for renewal of lease** -*Agreement by husband alone—Non-concurrence of mortgagee.*—Immoveable property situate in the Island of Bombay was conveyed in 1859 to *N* and his wife (Parsis), their heirs, executors, administrators, and assignees, and was subsequently mortgaged by *N* and his wife, but the mortgagee did not enter into possession In 1861 *N* alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N* could confer. *Held* that, notwithstanding the non-concurrence of the mortgagee and of *N*'s wife, *N* must specifically perform his contract The non-concurrence of the mortgagee could not prevent the [illegible]

23. ——— **Contract requiring registration**—*Failure to register—Unregistered document.*—The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him [illegible]

would lie TRIPURA SUNDARI *v.* RASIK CHANDRA KANUNGOI

[6 B. L. R., Ap, 134: 15 W. R., 189

See RAHMATULLA *v* SARIUTULLA KAGCHI

[1 B. L. R., F. B, 58: 10 W. R., F. B, 51

TULSI SAHU *v* MAHADEO DAS

[2 B. L. R, A. C, 105: 10 W. R., 483

FATI CHAND SAHU *v.* LILAMBER SINGH DAS

[9 B. L. R., 433: 14 Moore's I. A., 129
16 W. R, P. C., 28

PRABHURAM HAZRAH *v.* ROBINSON

[3 B. L. R., Ap, 49: 11 W. R, 398

SPECIFIC PERFORMANCE—*continued.*

2 SPECIAL CASES—*continued.*

24. ———— Unregistered contract—*Agreement.*—The plaintiff lent defendant R20,000, and received a document in the following terms: "On demand we promise to pay *S V M R C* and

memo.,—*Held* that the memo. contained an agreement of which a Court of equity would grant specific performance, had not defendant rendered specific performance impossible. CURRIE *v.* MUTU RAMEN CHETTY . 3 B. L. R., A. C., 126: 11 W. R., 520

25. ———— *Registration Act (III of 1877), ss. 48, 49, and 50—Oral agreement, Evidence of—Effect of oral agreement as against subsequent registered conveyance.*—*A*, by an oral

time of such grant, had notice of *A*'s previous agreement with *B*. *Held*, in a suit for specific performance brought by *B* against *A* and to which *C* and *D* were added as defendants, that, notwith-

26. ———— Bill of sale—*Agreement to transfer share of property in consideration of ad-*

made by *B*, for the recovery of certain property claimed by *A* against *C*, *A* would make over the half of the property recovered to *B*, but *A*, contrary to the terms of the agreement, without the consent of *B*, compromised his claim with *C*, and obtained possession,—*Held* the agreement did not operate as a transfer of the property to *B*, she could not sue to eject *A*. *Semble*—*B*'s proper remedy was a suit for specific performance or for damages for breach of the contract, to support which it would have been necessary to allege performance of her part of the contract, or at least readiness and willingness to perform, but prevention by *A*. BHOBO SOONDREE DASSEAH *v.* ISSUR CHUNDER DUTT [11 B. L. R., P. C., 36: 18 W. R., 140

27. ———— Agreement for mutual refusals before giving up dwelling-house—*Condition precedent — Limitation Act, 1877, art. 113.*—Two brothers, *V* and *R*, in 1861 agreed together that part of their house should be divided and part enjoyed in common. Each brother was to occupy an assigned division and have the use in common of the rest. If either wished to leave the house, he was bound to offer his share to the other at a fixed price; or if he wished to

demand no cause of action arose, and limitation only began to run from the demand; that specific performance should be granted in the alternative. *Venkappa Chetti v. Akku, 7 Mad., 219,* distinguished VIRASAMI MUDALI *v.* RAMASAMI MUDALI . . . I. L. R., 3 Mad., 87

28. ———— Contract for sale of land by Receiver—*Misdescription—Purchaser*

perty of the parties whose land the Receiver pur-

contended that the Receiver was a necessary party to the suit, and that the sale had been rescinded by a statement of the Receiver that he would forfeit the deposit in the event of the defendant not carrying out his contract. In support of his objection to

owners of the land down to low water mark, were entitled to all subsequent accretions, and were therefore entitled to include in their measurement all

cree for specific performance. GANGADHAR SIRKAR *v.* KASINATH BISWAS . . 9 B. L. R., 128

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

for building stores, for garden, for orchard, for road-making, and for other uses." The pottah, besides the above, contained the following, as translated:

possession of the whole of the extra land, and

guess and speculation, the Court will not decree

might have been necessary for such requirements. *Held* also that the plaintiffs, the assignees, were not entitled to compel the defendants to grant them a pottah of the extra land, even at a reasonable rate, merely for the purpose of selling it. *Semble*—In a suit for specific performance of an agreement to sell land, the fact that on account of the extraordinary character of the property, as its containing coal or other valuable minerals, there is considerable difficulty in fixing a reasonable rate for it, is not a sufficient reason for refusing a decree. NEW BEERBHOOM COAL COMPANY *v.* BOLARAM MAHATA

[I. L. R., 5 Calc., 175, 932
L. R., 7 I. A., 107

30. ——— Lease savouring of champerty—*Loan of money to carry on litigation.—Specific performance decreed of a lease though the*

31. ——— Compromise made under alleged concealment of fact—*Husband and wife—Armenian Christians.*—Specific performance decreed of an agreement in the English form made between husband and wife (Armenian Christians) in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement. *Held*, under the circumstances, that that fact, even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity. *Held* also that, if the property said to have been concealed by the husband had been purchased by him out of moneys belonging to the wife's separate estate which was clothed with a trust for the children of the marriage, the wife's remedy was to enforce her own and childern's rights by bill to compel a settlement of any property improperly withheld by the husband at the date of the execution of the agreement. GREGORY *v.* COCHRANE

[8 Moore's I. A., 275

ARRATHOON *v.* COCHRANE 4 W. R., P. C., 66

32. ——— Contract—*Disability to contract—Temporary disability of zamindar to contract, his estate being subject to the provisions of Act VI of 1876 (Chutia Nagpore Encumbered Estates Act), amended by Act V of 1884—Effect of continuance of transactions after the release of his estate from management under that Act.*—It is

terms are to be ascertained by what passed whilst he was disabled from contracting. The defendant's ancestral zamindari was placed under management by an order made under s. 2 of Act VI of 1876, and he became incapable of contracting in reference to it. He, however, agreed with the plaintiff that the latter should advance money on mortgage, and take a lease of part of the estate. Afterwards by an order, whether well founded or not, at all events effectively made, under s. 12 as amended by Act V of 1884, he was restored to the possession of his estate.

tract, though its terms were to be ascertained by what had passed while he was disabled from contracting, and that specific performance could be decreed against him. Whether his entering into the contract was against the policy of the Act and whether the order under s. 12 had, or had not, been made on good grounds, did not affect the question. GREGSON *v.* UDOY ADITYA DEB . I. L. R., 17 Calc., 223

[L. R., 16 I. A., 221

33. ——— Transfer of Property Act, 1882, s. 83—*Civil Procedure Code, s. 375.*—A sum of money having been deposited in Court under the Transfer of Property Act, s. 83, by a vendee of the mortgagor, the mortgagee refused to accept it in discharge of his mortgage except on the terms that the depositor should convey to him part of the

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

34. ——— Reversionary interest, Sale of—*Purchase-money less than market value of reversion—Stat. 31 Vict., c. 4—Inadequate consideration.*—The rule observed in England until the passing of Stat. 31 Vict., c. 4, that specific perform-

35. ——— Compromise—*Specific Relief Act (I of 1877), s. 22—Specific relief granted in respect of an agreement concerning which both parties had knowledge, were subse what they*

the property left by *N.* The first suit was brought in April 1879 by one *C*, claiming as a sister's son of

were successful In each the defendant appealed. In the case of *C* the defendant was successful, and the plaintiff's suit was dismissed by the High Court on the 7th of December 1886, in the other case the parties on the 2 th of July 1885 settled their dispute by a compromise While the two suits above-mentioned were pending, *S* and his co-plaintiffs instituted a suit on the 2nd of July 1883 against *C* and *M* asking for a declaration that they were entitled to succeed to the property of the

compromise was entered into between the Collector, on behalf of the minor children of *M* and one adult daughter of *M* on the one hand and the plaintiffs on the other, whereby the representatives of *M* relinquished the suit and consented to a decree being passed in favour of the plaintiffs, and the plaintiffs agreed that, when they got possession of the property, they would make over certain villages and a certain sum of money to the representatives of *M*. On the 6th of January 1888 the Collector of Bareilly instituted a suit for specific performance of the compromise of the 19th January 1885. The Court

DORASAMI REDDI . . I. L. R., 20 Mad., 19

37. ——— Party entitled to damages for breach of contract—*Right to specific performance—Injunction.*—A plaintiff who sues for

38. ——— Contract to give in marriage—*Hindu marriage and betrothal—Damages*

DAS . . . . . 7 Bom., O. C., 122

39. ——— *Hindu law—*

S C GUNPUT NARAIN SINGH *v.* RAJUN KOER [24 W. R., 207

40 ——— *Suit to enforce betrothal of marriage—Suit for damages.*—The plaintiff, on behalf of her infant son sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that, under the Hindu law, betrothal was the same as marriage, and could not be repudiated, and that the defendant had on demand refused to give up

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

shape of damages, and not by the specific performance of the alleged contract. NOWBUT SINGH *v.* LAD KOOER . . . . 5 N. W., 102

41. ——— Agreement by partners in absence of representative of a deceased partner—*Person in position of trustee.*—Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner; and an agreement entered into by such surviving partners, in the absence of the representative of a deceased partner, which agreement is inconsistent with the nature of such trust—to deal with the partnership assets only by way of sale—will not be specifically enforced. RAMLAL THAKURSIDAS *v.* LAKMICHAND MUNIRAM

[1 Bom., Ap., 51

42. ——— Stipulation in kabuliat—*Zamindar—Government, Liability of.*—One of the terms of a kabuliat, equally binding on the Government and a zamindar, the parties concerned, was as follows: "The construction of bheries (small embankments), the excavation of the silt of khals, the

formance. CHUNDER SEKHUR MOOKERJEE *v.* COLLECTOR OF MIDNAPORE

[I. L. R., 3 Calc., 464: 1 C. L. R., 384

43. ——— Agreement to advance money on mortgage.—In a suit to compel the defendant to advance R1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of R3,000

ment. ANAKARAN KASMI *v.* SAIDAMADATH AYULLA

[I. L. R., 2 Mad., 79

44. ——— Suit for execution of fresh instrument on retention of first one by defendant—*Specific Relief Act (I of 1877), ss. 12, 21, 22—Suit to restore terms of lost instrument.*—The plaintiffs, alleging that the defendants,

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

of a contract, and whether the only remedy open to the plaintiffs was not a suit for the money. It was only on the hypothesis that the mere writing of the original bond, in the absence of registration and final delivery, did not amount to a performance of

terms of the original bond. Observations on the nature of the evidence required to prove a contract of which specific performance is sought. *Per* STUART, *C.J.*—That the suit was bad in form and substance, and there was no ground for the remedy by specific performance of a contract. If the alleged bond were in existence, a suit simply and directly for the recovery of the money claimed by the plaintiffs would have sufficed, for in such a suit facts relating to the loss or concealment of the bond might have been proved, and under the circumstances secondary evi-

bond, the loss or destruction of which could not be doubted, their proper course of proceeding was by a

45. ——— Contract for sale and purchase—*Proposal made in letters—Earnest-money.*—The defendant in the name of his wife wrote to

deeds of the house, and receive the earnest. There shall be no doing otherwise." The plaintiffs through their manager wrote in answer to the defendant's wife: "You having agreed to purchase our house for R13,125 have sent a letter through the broker, and we are agreeable to it, and we will be present between 3 and 4 this day at your attorney's and receive the earnest." The plaintiffs and defendants

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

met at the attorney's office in the absence of the attorney, and no inspection of title-deeds or payment of the earnest-money therefore took place *Held*, in a suit for specific performance of the above contract, that the first letter contained no absolute proposal or undertaking to purchase, but merely fixed the price to be given for the house, leaving the inspection of title-deed and the payment of earnest-money to be settled at the meeting asked for. That both parties having treated the payment of earnest-money as an element in the contract, the contract could not be completed till the amount of earnest-money had been ascertained. KOYLASH CHUNDER DOSS *v.* TARINY CHURN SINGHEE . . I. L. R., 10 Calc., 588

46. ———— *Agreement to* [illegible]

to sell certain land belonging to them for a fixed price contingent upon the leave of the Court, which was necessary, being obtained to the transaction, and a portion of the purchase-money was paid by the plaintiff. The Court sanctioned the sale, but at a higher price than that agreed on between the plaintiff and the guardian, and the latter sold to a third party. The plaintiff thereupon sued the minors by their guardian as next friend and the third party [illegible]

Act did not apply. The contract as it stood was never a complete contract at any time, as it was contingent upon the permission of the Court, and the permission of the Court did not extend to the whole contract as agreed upon between the parties. NARAIN PATTRO *v.* AUKHOY NARAIN MANNA

[I. L. R., 12 Calc., 152

47. ———— Suit for specific performance of a contract against a minor—*Contract entered into by a guardian with the sanction of the Court—Act XL of 1858, s 18—Guardians and Wards Act (VIII of 1890), s 31*—In a suit to enforce specific performance of a contract against a minor, entered into by a guardian appointed under Act XL of 1858 with the sanction of the Court, it was not shown that the contract was for the benefit of the minor *Held* that a decree for specific performance of a contract should not be made against the defendant while an infant *Flight* v. *Holland*, 4 *Russ.*, 298, and *Sikher Chand* v *Dulputty Singh*, *I. L. R.*, 5 *Calc.*, 363, referred to *Held* also that, although the jurisdiction to decree specific performance is discretionary it must be judicially exercised and no Court would, even if it could, make a decree for the specific performance of a contract, unless the contract was shown to be for the infant's benefit JUGUL KISHORI CHOWDHURANI *v.* ANUNDA LAL CHOWDHURI . I. L. R., 22 Calc., 545

48. ———— *Contract Act (IX of 1872), s. 11—Specific Relief Act (I of 1877), s 29—Hindu law—Guardian.*—The mother and guardian of a Hindu minor entered into a contract for the sale of his land. The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession It was found that the contract was binding on the minor. *Held* that the suit was maintainable. *Fatima Bibi* v. *Debnauth Shah, I. L. R., 20 Calc.*, 508, dissented from. KRISHNASAMI *v.* SUNDARAPPAYYAR . . . I. L. R., 18 Mad., 415

49. ———— Contract relating to property of minor—*Decree for specific performance.*—A decree for specific performance can be given against a minor when the Court finds that it is for the benefit of the minor that the contract should be performed *Krishnasami* v. *Sundarappayyar*, *I. L R.*, 18 *Mad.*, 415, approved *Fatima Bibi* v. *Debnath Shah*, *I L. R.*, 20 *Calc.*, 509, dissented from. KHAIRUNNESSA BIBI *v.* LOKE NATH [illegible]

[I. L. R., 27 Calc., 276

50. ———— Contract as to obtaining share of patni lease—*Partial performance.*— [illegible]

that defendants had fraudulently got a patni lease executed in their names and had taken possession, [illegible]

agreement *H* pleaded that he was not privy to the agreement, and the minor that he was not bound. [illegible]

51. ———— Giving lease with possession to another than plaintiff—*Suit for possession where remedy is suit for damages.*—*D*, after having given a kutkina pottah of a certain village to *M*, granted another kutkina pottah of the same land to *R*, who obtained possession under his pottah. *M*

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

then sued *D* and *R* for ejectment and to recover possession *Held* that *M's* remedy lay in an action *for damages,* and that he could not claim specific performance unless *R* raised no objection to giving up possession. BUJRUNGEE DUTT PATTUCK *v.* MOORAD ALI . . . . 22 W. R., 7

52. ———— Conveyance to other parties

tion, the party in whose favour the conveyance was executed should seek his remedy against the executants, not in a suit for specific performance, but in an action for damages. NUND KISHORE LALL *v.* MOHUN LALL . . . . 22 W. R., 164

53. ———— Refusal of specific performance where suit for damages is proper remedy.—*Held,* under the circumstances of the case, that there was not such a contract on consideration received as to make this a case where a suit for specific performance rather than a suit for damages should be held to be the correct form of action BAL GOBIND MUHTOON *v.* LUTAFUT HOSSEIN [7 W. R., 142

54. ———— Agreement extending lease on conditions—*Right to possession under former*

dar leave to institute a suit for redemption upon payment to the defendant of all sums advanced to him. In a suit instituted by the zamindar for redemption in 1866, a razinamah was signed by the plaintiff and defendant in the suit, by which the term of the original lease was extended to the year 1875 for the considerations therein contained. In 1867 the plaintiff brought a suit for possession, and claimed the benefit of the stipulations contained in the razinamah, *or for damages* *Held that the plaintiff was* not entitled to possession, on the ground that defendant was not in possession under the old lease, inasmuch as the effect of the razinamah of 1866 was not to extend the former old lease, but plaintiff was entitled to recover damages for loss of profits during the defendant's father's possession under the old lease. FONDCLAIR *v.* VINAITHEETHAN CHETTY . 5 Mad., 251

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

55. ———— Vendor and purchaser—*Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple—Specific Relief Act (I of 1877), s. 21.*—On the 16th November 1893 the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the 21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession. In a suit brought by plaintiff against defendants Nos. 1 and 2 for specific performance of the contract of the 16th November,—*Held* that specific performance could not be granted, the covenants contained in the agreement being such as the Court could not enforce. RAMCHANDRA GANESH PURANDHAREE *v.* RAMCHANDRA KONDAJI [I. L. R., 22 Bom., 46

56. ———— *Act I of 1877*

appeared that the judgment of the Appellate Court was about to be given against him on the ground that he was not entitled to what he claimed. *Held* that certain reported cases where, apparently, the plaintiff had been willing to submit to have the agreement which was actually proved performed, were different from this; and that the decree dismissing the suit ought to stand. Here the plaintiff, insisting upon having that which he had no right to have, had delayed performing his part of the agreement on that account. BINDESHRI PRASAD *v.* JAIRAM GIR [I. L. R., 9 All., 705
L. R., 14 I. A., 173

57. ———— *Suit by vendee against vendor—Delay of vendee in completing—Rescission of contract by vendee—Time of the essence of the contract—Extension of the time stipulated for—Effect of such extension—Conditional waiver of performance within stipulated time—Notice to complete—Unreasonable notice.*—

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

within twelve days from the date of the agreement (22nd June 1886), and this was duly inserted in the agreement. During the twelve days the plaintiff took no steps to have his conveyance prepared, but asked the defendant for a month's time to complete, saying that he had not the money with him. After some hesitation the defendant extended the time to the 10th August. On the 21st July at latest the drafts of the conveyance from *C* to the defendant were formally and finally approved, and

reply to this letter, but at an interview with the defendant told him that he was considering the matter. He, however, took no steps in the matter beyond getting a draft conveyance prepared. The deed of conveyance by *C* to the defendant was

days, he would consider the agreement at an end. The four days having expired without the plaintiff sending a reply or taking any steps to complete, the defendant considered his contract with the plaintiff

defendant and the conveyance by *C* to the defendant would have been executed simultaneously. Immediately after taking the conveyance from *C*, the defendant began to repair the house When the repairs were almost complete, the plaintiff, on the 5th October

was made and to the nature of the property, the time stipulated for the completion of the purchase was of the essence of the contract, and that the extension of time granted at the plaintiff's request to the 10th August operated only as a waiver to the extent of substituting the extended time for the original time, and did not destroy the essentiality of the time *Barclay v. Messenger, 43 L. J., Ch., 449.* The defendant's letter of the 23rd July was but a timely warning to the plaintiff that the contract would not be kept in suspense after the extended time had expired. The plaintiff, though thus warned, took no steps to complete, and was not therefore in a position to enforce performance from the defendant after the

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

fact, by that letter waived the plaintiff's previous

four days' time limited by that letter was unreasonable. FAKIR MAHOMED *v.* ABDULLA

[I. L. R., 12 Bom., 658

58. ——— **Failure to give possession under agreement**—*Suit for specific possession.*—A purchaser of property of which possession was contracted to be given, but which contract the vendor is unable to fulfil, is at liberty to rescind the contract and sue for repayment of the purchase-money, and is not obliged to sue for specific performance. MOHUN LAL *v.* BEHAREE LAL

[3 N. W., 336

59. ——— **Agreement to pay money or in default to execute bond**—*Suit to recover money.*—By an agreement it was contracted that the defendant should pay to the plaintiff R4,000

60. ——— **Agreement for assignment of rents**—*Suit for consideration-money—Damages.*—The plaintiff, having agreed to assign certain arrears of rent due to him to the defendant for a consideration, brought this suit in which he tendered

SPECIFIC PERFORMANCE—*concluded.*

2. SPECIAL CASES—*concluded.*

contract as subsisting. SHEO PERGAH ROY *v.* INJORE TEWARRE . . . 21 W. R., 433

61. – Agreement by Government to pay moneys in lieu of tora garas hak—*Jurisdiction of Civil Courts—Pensions Act, XXIII of 1871, s 4.*—A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of tora garas haks, falls

grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. Observations on the cessation of the collection of tora garas by Government *Quære*—Whether Government bound itself to act perpetually as agent of the garasias in the collection of tora garas. *Quære*—Whether the Civil Courts would compel the specific performance of such an agreement. MAHARVAL MOHANSANGJI *v.* GOVERNMENT OF BOMBAY I. L. R., 4 Bom., 437

SPECIFIC RELIEF ACT (I OF 1877)

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE I. L. R., 4 Calc, 380

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS. [I. L. R., 21 All., 348

See PRESCRIPTION — EASEMENTS — LIGHT AND AIR . I. L. R., 18 Bom., 474

s. 9 (Act XIV of 1859, s. 15)

See APPEAL — ORDERS. [I. L. R., 22 Calc., 830

See COSTS — SPECIAL CASES — SUMMARY SUIT FOR POSSESSION . 15 W. R, 168

See PARTIES — PARTIES TO SUITS — PRINCIPAL AND AGENT. [I. L. R., 5 Bom., 208

See POSSESSION—NATURE OF POSSESSION. [I. L. R., 15 Bom., 228

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION . . . 20 W. R., 12

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS. [I. L. R., 6 Bom., 477

See CASES UNDER SPECIFIC PERFORMANCE

See STATUTES, CONSTRUCTION OF [I. L. R., 19 Calc., 544

See TITLE—EVIDENCE AND PROOF OF TITLE [5 C. L. R., 278

This section corresponds with s. 15 of the Limitation Act of 1859. The following are cases decided on that section:—

1. ——— *Criminal Procedure Code, 1861, ss. 318, 319—Dispossession.*—The object and

SPECIFIC RELIEF ACT (I OF 1877)—*continued.*

effect of s 15 of Act XIV of 1859 considered, and the bearing of ss 318 and 319 of the Code of Criminal Procedure with regard to cases of dispossession and the jurisdiction of the Civil Courts, illustrated. ENAETOOLLAH CHOWDHRY *v.* KISHEN SOONDUR SURMA . . . 8 W. R., 386

2. ——— *Object of section—Wrongful dispossession—Onus of proof.*—S. 15 did not affect the general law on the matters to which it related, but provided a special remedy for a particular kind of grievance, *e g*, to replace in possession a person who had been evicted by a wrongful act from landed property of which he had been in undisturbed possession, and to prevent a powerful person from thus shifting the evidence of proof from himself to another less able to support it. KALEE CHUNDER SEIN *v.* ADOO SHAIKH . . 9 W. R., 602

3 ——— *Possessory actions by persons wrongfully dispossessed—Civil Procedure Code, 1859, s 230*—S. 230 of the Civil Procedure Code of 1859, which related to possessory actions by persons wrongfully dispossessed in execution of decrees, did not apply to a case determined under s. 15 of Act XIV of 1859 GOBIND CHUNDER BAGDEE *v.* GOBIND GHOSE MUNDUL . . 7 W. R., 171

4. ——— *Previous possession—Dispossession*—Mere previous possession will not entitle a plaintiff to a decree for the recovery of possession except in a suit under s 9 of the Specific Relief Act, 1877, which must be brought within six months from the date of dispossession. *Khajah Enaetollah Chowdhry* v. *Kishen Soondur Surma, 8 W. R., 389, Ertaza Hossein* v. *Bany Mistry, I. L. R, 9 Calc, 130, Debi Churn Boido* v. *Issur Chunder Manjee, I L R, 9 Calc., 39; Kawa Manjee* v. *Khowaz Nussio, 5 C. L. R., 278; Wise* v. *Ameerunnissa Khatoon, L. R., 7 I. A., 73; Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar, I. L R., 8 Bom., 371, Pemraj Bharamiram* v. *Narayan Shivaram Khisti, I. L. R., 6 Bom, 215; Mohabeer Pershad* v. *Mohabeer Singh, I. L. R., 7 Calc, 591 9 C. L. R., 164,* referred to and explained. PURMESHUR CHOWDHRY *v.* BRIJOLALL CHOWDHRY . . . I. L. R., 17 Calc, 256

SHAMA CHURN ROY *v.* ABDUL KADEER [3 C. W. N., 158

NISA CHAND GAILA *v.* KANCHARAM BAGANI [I. L. R., 26 Calc., 579 3 C. W. N., 508

5. ——— *Suit to enforce right of way.*—S. 15 of Act XIV of 1859 was not applicable to a suit to enforce a mere right of way HARO DYAL BOSE *v.* KRISTO GOBIND SEIN. 17 W. R., 70

6 ——— *Nature of possession necessary for suit—Possession as trespasser. Semble.*—Mere possession as a trespasser was not sufficient to entitle a plaintiff to recover in a suit brought under s. 15 of Act XIV of 1859. There must be in the

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

plaintiff juridical as opposed to mere physical possession. DADABHAI NARSIDA *v.* SUB-COLLECTOR OF BROACH . . . . 7 Bom., A. C., 82

7. ———— *Warrant of execution—Seizure of immoveable property not described in decree—Illegal possession.*—Where a warrant was issued to the Sheriff to seize certain specific immoveable property not coming within the description in the decree, it was held that possession under such warrant would not be an illegal possession under the meaning of s. 15. JADUB CHUNDER CHECKEY *v.* HEERALOLL SAHA

[1 Ind. Jur., N. S., 21 : Bourke, O. C., 384

8. ———— *Right of way—Immoveable property.*—A right of way is not "immoveable property" within the meaning of s. 9 of the Specific Relief Act. MANGALDAS *v.* JEWANRAM

[I. L. R., 23 Bom., 673

9. ———— *Tenants illegally ejected.*—A tenant in possession after expiry of his lease can only be ejected by due course of law, and if illegally dispossessed, he was entitled, under s 15, Act XIV of 1859, to sue and recover possession, notwithstanding a pottah set up by defendant. SOFAOLL KHAN *v.* WOOPEAN KHAN . 9 W. R., 123

10. ———— *Time within which suit must be brought.*—The suit must be brought within six months of the alleged ouster otherwise anterior possession would be of no avail to the plaintiff. AMEER BIBEE *v.* TUKROONISSA BEGUM

[7 W. R., 332

Upheld on review in TUKROONISSA BEGUM *v.* MOGUL JAN BIBEE . . . . 8 W. R., 370

AMEEROONISSA KHATOON *v.* WISE

[24 W. R., 435

The plaintiff is entitled to recover notwithstanding any other title DOE D. KULLAMMAL *v* KUPPU PILLAI . . . . . 1 Mad., 85

11. ———— *Trial of question of dispossession.*—Plaintiff having sued under s 15 Act XIV of 1859, for possession of a parcel of land of which he alleged himself to have been dispossessed by defendants building a hut upon it, the Court of first instance determined that, as the land was part of ... ssion of ... ision of ... *Held* ... uld not try whether the plaintiff was dispossessed as alleged, and whether he should not have possession OMARCHAND MAHATA *v.* NAWAB NAZIM OF BENGAL

[11 W. R., 229

12. ———— *Right under decree for possession.*—A party recovering possession of land in virtue of a decree under s 15, Act XIV of 1859, recovered the land with the crop growing upon it, and was fully entitled to cut the same. SHIRAJDEE PRAMANICK *v.* EMAM BUKSH BISWAS

[13 W. R., 104

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

13. ———— *Suit to set aside award* ...

the defendant could be called upon to prove his case, JUGGURNATH DEB *v.* MAHOMED MOKEEM

[17 W. R., 161

14. ———— *Suit to set aside award under section.*—Although in a suit to set aside an award made under s. 15, Act XIV of 1859, plaintiff had to establish his own title before the party in possession could be required to make good his case, a Judge should look into the summary case itself, and ascertain if there had been a proper inquiry and trial in that case SURBO MOHUN ROY *v.* SURUT CHUNDER ROY . . 16 W. R., 34

15. ———— *Decree for possession—Evidence.*—A decree for possession in a suit under s 15 of Act XIV of 1859 was *primâ facie* evidence that the plaintiff in that suit was entitled to recover, from the defendant therein, mesne profits for the period of dispossession RADHA CHARAN GHATAK *v.* ZAMIRUNISSA KHANUM

[2 B. L. R., A. C., 67 : 11 W. R., 83

Reversing S. C. ZUMURUDOONISSA *v.* RADHA CHURN GHUTTUCK . 9 W R., 590

See JIAULLAH SHEIKH *v.* INU KHAN

[I. L. R., 23 Calc, 693

and cases there cited.

16. ———— *Mortgagee in possession—Dispossession by mortgagor—Suit for possession—Fraud.*—It is no answer to a suit for possession under s. 9 of the Specific Relief Act, brought against a mortgagor by a mortgagee who has been forcibly dispossessed by the mortgagor, to allege that the mortgage and possession under it were obtained by the fraud of the mortgagee The mortgagor's proper remedy is by way of a suit to set aside the mortgage and recover possession. SAYAJI BIN NIMBAJI *v* RAMJI BIN LANGAPA

[I L R, 5 Bom, 446

17. ———— *Partial dispossession—Suit for possession.*—A possessory suit lies under s. 9 of the Specific Relief Act when plaintiff's possession has been partially, as well as when it has been wholly disturbed SABAPATHI CHETTI *v.* SUBBAYA CHETTI . I. L. R, 3 Mad, 250

18. ———— *Possessory suit—Constructive possession by receipt of rents.*—The mere discontinuance of payment of rent by tenants does not constitute a dispossession within the meaning of s. 9 of the Specific Relief Act The object of that section is to provide a speedy remedy for that class of cases where a person in physical possession of

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

19. ——— *Immoveable property—Right of fishery—Possession—Dispossession* —The

forth in the plaint, and under s. 9 of the Specific Relief Act (I of 1877) they sought to recover possession of that right from the defendants, who, they alleged, had dispossessed them within six months before this suit was filed The Subordinate Judge held that they had established their right, and made

the right claimed coming within the denomination of immoveable property. BHUNDAL PANDA *v.* PANDOL POS PATIL . . . I. L. R., 12 Bom., 221

20. ——— *Right of fishery—Suit for possession of right to fish in a khal.*—A suit for the possession of a right to fish in a khal, the soil of which belongs to another, does not come within the provisions of s. 9 of the Specific Relief Act, 1877. NATABAR PARUE *v.* KUBIR PARUE [I. L. R., 18 Calc., 80

21. — — — *Immoveable property—Right of fishery—Possession, Suit for*—*Held* by

the Specific Relief Act. FADU JHALA *v.* GOUR MOHUN JHALA . . I. L. R., 19 Calc., 544

22. — — *Immoveable property—Right of ferry.*—A right of ferry is immoveable property or an interest therein within the meaning of the Specific Relief Act, s. 9. KRISHNA *v.* AKILANDA . . . I. L. R., 13 Mad., 54

23. ——— *Mamlatdars' Courts Act (Bom. Act III of 1876)—Suit by a trespasser to*

[illegible] v. Sub-Collector of Broach, 7 Bom H. C Rep., A C J., 62, Krishnarav Yashvant v Vasudev Apaji Ghotikar, I. L R., 8 Bom, 371, and *Virjivandas Madhavdas v. Mahomed Alikhan Ibrahimkhan, I. L. R., 5 Bom., 208,* referred to. AMIRUDIN *v* MAHAMAD JAMAL [I. L. R., 15 Bom., 685

24. ——— *Possession, Suit for—Suit in ejectment on a possessory title*—*Per* EDGE, *C.J.*, STRAIGHT and TYRRELL, *JJ.* (MAHMOOD, *J*, *dissentiente*)—S. 9 of the Specific Relief Act is intended to provide a special summary remedy for a person who, being, whatever his title, in possession of immoveable property, is ousted therefrom. That section does not debar a person who has been ousted by a trespasser from the possession of immoveable property to which he has merely a possessory title from bringing a suit in ejectment on his possessory title after the lapse of six months from the date of his dispossession. *Davison v. Gent, 26 L J Exch., 122; Asher v Whitlock, L. R, 1 Q B., 1; Wise v. Ameer-un-nissa Khatoon, L. R., 7 I. A., 73, Pemraj Bhabaniram v Narayan Shivaram Khisti, I L. R., 6 Bom., 215; Krishnarav Yashvant v Vasudev Apaji Ghotikar, I. L R., 8 Bom, 371;* and *Muhammad Yusuf v. Sukh Nath, Weekly Notes,*

AHMAD KHAN *v.* AJUDHIA KANDU [I. L. R., 13 All., 537

25. ——— *Nature of possession giving right of suit—Juridical possession* —Where the plaintiff alleged that he was in possession of a certain room as representing his father and uncle who were alive, but who were not parties to the suit, and that he had been dispossessed from such room within six months of the institution of the present suit,—*Held* that his possession, not being juridical possession, did not entitle him to maintain a suit under s. 9 of the Specific Relief Act Permission to be allowed to amend the plaint by alleging that the possession

26. ——— *Suit for possession by person evicted brought more than six months from date of dispossession against one having better title than himself.*—Certain land belonging to two

them by such eviction. The defendants' title was found to be good *Held* that s. 9 of the Specific Relief Act was not applicable, and that plaintiffs could not succeed. *Per* SUBRAHMANIA AYYAR, *J.*—That it is an undoubted rule of law that a person

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

Specific Relief Act cannot be held to take away any remedy available with reference to the well recognized doctrine that possession in law is a substantive right or interest which exists and has legal incidents and advantages apart from the true owner's title. But that the above propositions were inapplicable to the facts of the present case where the defendants were found to have good title. *Per* O'FARRELL, J.—

27 — — *Civil Procedure Code, 1877, s. 103—Re-hearing—Review.*—S. 9 of the Specific Relief Act does not prohibit a re-hearing under s 103 of the Code of Civil Procedure A re-hearing differs widely from a review. ANTHONY *v* DUPONT . I. L. R., 4 Mad., 217

28 ——— *Suit or possession of land by person wrongfully ejected—Joinder of other claims.*—A Court should in all cases in which it applied give effect to the provisions of the first paragraph of s 9 of the Specific Relief Act, 1877, whether that section is expressly pleaded or not. There is nothing to prevent a claim for damages and a claim for establishment of title being joined with a claim for the relief provided for by the abovementioned section RAM HARAKH RAI *v*. SHEODIHAL JOTI . . I. L. R., 15 All., 384

29 ——— *Decree for possession—Form of decree.*—Where a decree was passed under

scope of a possessory decree under s 9 of the Specific Relief Act, and must be set aside TILAK CHANDRA DASS *v* FATIK CHANDRA DASS

I. L. R., 25 Calc., 803

——— s 18

See VENDOR AND PURCHASER—MISCELLANEOUS CASES 2 C. L. R., 382
I. L. R., 14 Mad., 459

——— s 19—*Suit for declaration under a mokurari pottah—Alternative relief—Civil Procedure Code (Act X of 1877), s 28.*—A suit to have a

rights to it as against all the defendants, and under

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

——— ss. 20, 21.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.

I. L. R., 14 Mad., 18

1 ——— s. 21—*Agreement to refer to arbitration—Refusal to refer—Pleading*—A contract to sell goods contained the following clause "That any dispute arising hereafter shall be settled by the selling broker, whose decision shall be final" In a

Procedure, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person, who has made such a contract, and has refused to perform it, sues in respect of any subject which he

2 — *Agreement to refer to arbitration—Award—Suit in respect of matter referred barred.*—The parties to a suit applied for an adjournment of it on the ground that they had agreed to refer the matters in difference between them in such suit to arbitration The Court accordingly adjourned the suit, and the matters in difference therein were referred to arbitration by the parties, and an award was made thereon disallowing the plaintiff's claim *Held* that, under these circumstances, the further hearing of such suit was barred. SALIG RAM *v* JHUNNA KUAR

I. L. R., 4 All., 546

3 ——— *Agreement to refer to arbitration—Refusal to refer—Suit in respect of matter agreed to be referred—Pleadings*—One of the parties to a contract to refer a controversy to arbitration brought a suit for part of the subject-matter referred The defendants pleaded the bar of s. 21 of the Specific Relief Act, but did not allege in their answer to the plaint that the plaintiff refused to perform his contract *Held* that the mere act of filing the suit on the part of the plaintiff was not tantamount to a refusal to perform his contract in the sense of s 21 of the Specific Relief Act The contract, the existence of which would bar a suit under the circumstances contemplated by s 21 of the Specific Relief Act, must be an operative contract,

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

and not a contract broken up by the conduct of all the parties to it. TAHAL *v.* BISHESHAR [I. L. R., 8 All, 57

4. ———— *Contract to refer dispute to arbitration—Refusal to perform such contract—Right of suit.*—To bar a suit under s 21 of the Specific Relief Act, a refusal to arbitrate must be before the action is brought CRISP *v.* ADLARD [I. L. R., 23 Calc., 958

5. ———— *Agreement to refer to arbitration—Refusal to perform agreement* —In a suit

writing to you as follows We used to reside and act in the house together in peace and harmony. Lately, a few days ago, in consequence of a disagreement amongst the women, *V* resided separately Upon persuasion having been used towards her, *V*

at which the plaintiff withdrew from the arbitration —whether before or after the time allowed to the arbitrators to make and publish their award, *viz.*, fifteen days. If the latter, her withdrawal could not, in any view of the section, be held to be a refusal on her part to perform her agreement to refer. Even if the plaintiff's withdrawal was unjustifiable, it ap-

show that the defendant did not acquiesce in it. *Quære*—Whether the above agreement was not void by reason of uncertainty *Quære*—Whether the actual submission of a subject in dispute to named arbitrators, followed by the attempt of one of the parties to such submission to withdraw from or to prevent an award being made upon the submission, falls within the concluding paragraph of s 21 of the Specific Relief Act I of 1877 ADHIBAI *v.* CURSANDAS NATHU . . I. L. R., 11 Bom., 199

6. ———— *Arbitration—Agreement to refer—Order under s. 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s 373, pending the reference granting plaintiff permission to withdraw with liberty to*

suit which is proceeding in Court. The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s 373 of the Code for leave to withdraw from the suit with liberty to bring

and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action *Per* TARKFIL, J., that the suit was barred by the second clause of

———— s 22.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.
[I. L. R., 18 Bom., 703
I. L. R., 19 Bom., 761

———— s. 23 and s 27, cl (c) — *Contract to take shares*—S 23, cl. (b), and s 27, cl (c) of the Specific Relief Act (I of 1877) do not apply to contracts to take shares; and only embody the English law as to cases where a company has taken the

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

benefit of a contract, but refuses to carry it into effect. IMPERIAL ICE MANUFACTURING COMPANY *v.* MUNCHERSHAW BARJORJI WADIA [I. L. R., 13 Bom., 415

———— s. 25.

See VENDOR AND PURCHASER—TITLE [I. L. R., 15 Bom., 657

———— s. 26.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 4 Bom., 591

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R., 12 Calc., 152

———— s. 27.

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 18 Mad., 43

See VENDOR AND PURCHASER—NOTICE [I. L. R., 10 Calc., 710
I. L. R., 27 Calc., 358

1. ———— cl. (b)—*Misjoinder—Joinder of causes of action—Multifariousness*—The plaintiffs sued to enforce an agreement for the execution of a conveyance of certain immoveable property, and for the possession of such property, making the party to such agreement and the persons who had, subsequently to the date of the same, purchased such property in execution of decree, defendants in the suit, on the allegation that such persons had purchased in bad faith and with notice of the agreement. *Held,* with reference to s. 27 of Act I of 1877, that, under such circumstances, there was not necessarily a misjoinder of causes of action GUMANI *v.* RAM CHARAN . . . I. L. R., 1 All., 555

2. ———— ———— *Agreement to convey the mortgaged property in case of default—Suit for specific performance of contract—Mortgage—First and second mortgagees*—On the 7th February 18 3 [illegible]

fixed, he would convey such state to *P*, and that if he failed to execute such conveyance, *P* should be competent to bring a suit 'to get a sell effected and a deed of absolute sale executed' On the 6th October 1877 *F* mortgaged such estate to *B* and *D* [illegible]

June 1878, in execution of that decree, such estate was put up for sale and was purchased by *D* In February 1880 *P* sued *F* and *D* for the execution of a conveyance of such estate to him in accordance with *P*'s agreement of the 7th August 1877 *Held* that the mortgage of the 7th August 1877 was not in the nature of a mortgage by conditional sale, and there was no necessity for *P* to take proceedings to foreclose the mortgage, and the suit was maintainable. Also that, assuming that *D* had no notice of the agreement of the 7th August 1877, it was very doubtful whether under s. 27 (*b*) of Act I of 1877 *D* could claim that specific performance of that agreement should not be granted, inasmuch as the contest lay between a prior and subsequent lien created upon the same property, which had passed to the transferee under a sale in execution of a decree for the enforcement of the subsequent lien BADRI PRASAD *v.* DAULAT RAM . I. L. R., 3 All., 700

———— s. 28.

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R., 18 Mad., 415

———— s. 30

See LIMITATION ACT, 1877, ART. 113 [I. L. R., 5 All., 263
I. L. R., 16 All., 3
I. L. R., 23 Mad., 503

———— s. 31

See DEED—RECTIFICATION. [I. L. R., 14 Calc., 308
L. R., 14 I. A., 18

———— *Landlord and tenant—Rectification or alteration of contract of tenancy—Specific Relief Act (I of 1877) s. 31.*—Where a party to a contract of tenancy desires to have it rectified or altered, the suit should be brought under s. 31 of the Specific Relief Act. ANARULLAH SHAIKH *v.* KOYLASH CHUNDER BOSE [I. L. R., 8 Calc., 118

S. C. KOYLASH CHUNDER BOSE *v.* ANARULLAH SHEIKH . . . . 9 C. L. R., 467

———— ss. 31, 34.

See CONTRACT—BOUGHT AND SOLD NOTES. [I. L. R., 20 Calc., 854

———— s. 35

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY [I. L. R., 3 Mad., 215

———— — *Rescission of contract, Suit for—Evidence necessary to set aside contract*—In order that a contract should be set aside under s. 35 (*b*) of the Specific Relief Act (I of 1877), the plaintiff should be shown to have been less to blame in the transaction than the defendant HARI BALKRISHNA *v.* NARO MORESHVAR [I. L. R., 18 Bom., 342

———— ss. 38, 41

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 26 Calc., 381

———— s. 39

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS [I. L. R., 7 Calc., 736
I. L. R., 23 Bom., 375

See LIMITATION ACT 1877 ART 91 [I. L. R., 5 All., 323

SPECIFIC RELIEF ACT (I OF 1877)
—continued.

See ONUS OF PROOF—DECREES AND DEEDS' SUITS TO ENFORCE OR SET ASIDE.
[I. L. R., 12 All., 523

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R., 9 All., 439
[I. L. R., 23 Bom., 375

—— s. 40 and Ch. IV, ss. 35-38—*Impossibility arising after execution of contract to perform a portion—Suit to cancel such portion.*—A contract was entered into between the plaintiff and the defendant by which the plaintiff agreed to cultivate indigo for the defendant for a specified number of years in certain specified lands situated in different villages, with respect to portion of which lands the plaintiff wa[illegible] tinuance of th[illegible] of those lands t[illegible] ing failed to p[illegible] quence ejected [illegible]

[illegible]

1877 (Specific Relief Act) did not apply to such a case, but that the plaintiff was entitled to the relief he sought under s. 40 of that Act, inasmuch as the contract was evidence of different obligations, *viz.*, to cultivate indigo in different villages. INDER PERSHAD SINGH *v.* CAMPBELL
[I. L. R., 7 Calc., 474 : 8 C. L. R., 501

—— s. 42.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
[I. L. R., 9 All., 622

See CASES UNDER DECLARATORY DECREE, SUIT FOR.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N. W. P.
[I. L. R., 11 All., 224

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[11 C. L. R., 533

See HINDU LAW—REVERSIONERS—ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS.
[I. L. R., 22 Calc., 354

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.
[I. L. R., 18 Mad., 53

See MADRAS LAND REVENUE ASSESSMENT ACT, s. 2 . I. L. R., 19 Mad., 292
[I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

See ONUS OF PROOF—PARTITION.
[I. L. R., 16 Calc., 117

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R., 15 Bom., 309

SPECIFIC RELIEF ACT (I OF 1877)
—continued.

See PARTITION—MISCELLANEOUS CASES
[I. L. R., 16 Calc., 117

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R., 8 All., 31

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R., 7 All., 583

—— s. 45.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . I. L. R., 22 Calc., 717

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES
[I. L. R., 16 Bom., 398

—— *Chairman of Calcutta Municipality, Discretion of, as to list of candidates and votes at elections.*—Instances of applications under s. 45 of the Specific Relief Act for rules against the Chairman of the Calcutta Municipality with regard to the list of candidates for and the votes given at municipal elections. IN THE MATTER OF MUTTY LALL GHOSE . I. L. R., 19 Calc., 192

IN THE MATTER OF RAJENDRA LALL MITTRA.
[I. L. R., 19 Calc., 195 note

IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO. 10, CALCUTTA
[I. L. R., 19 Calc., 198

—— s. 53.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[I. L. R., 23 Calc., 351

—— s. 54.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS
[I. L. R., 12 All., 436

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT
[I. L. R., 18 Bom., 702
I. L. R., 19 Bom., 764

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[I. L. R., 22 Mad., 189

See INJUNCTION—SPECIAL CASES—INTRUSION IN OFFICE.
[I. L. R., 21 Bom., 831

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.
[I. L. R., 13 Bom., 252, 674
I. L. R., 19 All., 259
I. L. R., 20 Bom., 704
I. L. R., 24 Calc., 260
I. L. R., 22 Mad., 251

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.
[I. L. R., 16 Mad., 407

SPECIFIC RELIEF ACT (I OF 1877) —*concluded.*

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R., 15 Bom., 309

See PRESCRIPTION — EASEMENTS — LIGHT AND AIR.
[I. L. R., 13 Bom., 674
I. L. R., 18 Bom., 474
I. L. R., 20 Bom., 704

See VENDOR AND PURCHASER—INVALID SALES I. L. R., 18 Mad., 61

——— s. 55

See INJUNCTION — SPECIAL CASES — OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R., 14 Calc., 236

——— s. 56.

See INJUNCTION—SPECIAL CASES—EXE

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W P.
[I. L. R., 5 All., 429

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L.R., 22 Bom., 646

——— s. 57.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT
[I. L. R, 14 Mad, 18
I. L R., 18 Bom., 702
I. L R, 19 Bom, 764

"SPIRITUOUS LIQUOR."

See CANTONMENTS ACT, 1880, s 14
[I. L. R., 15 Calc, 452

SPLITTING CAUSE OF ACTION.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION 7 B. L. R., Ap., 42

See CASES UNDER RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERAL CASES . 6 Bom, O. C., 88
[4 Mad., 334
I. L. R., 2 Bom, 570

SPLITTING OFFENCE.

See CRIMINAL PROCEEDINGS
[I. L. R., 4 Calc., 18

SPY.

See ACCOMPLICE.
[I. L. R., 19 Bom., 363

STAKEHOLDER.

See INTERPLEADER SUIT.
[2 Ind. Jur., N. S., 113

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . 4 Bom., O. C., 125

STAMP.

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW

See CASES UNDER COURT FEES ACT

See POWER-OF-ATTORNEY.
[I L R., 23 Calc, 187

See CASES UNDER VALUATION OF SUIT.

——— Cancellation of—

See PLAINT—RETURN OF PLAINT.
[I. L. R., 7 Bom, 487

——— Deficiency in—

See CASES UNDER LIMITATION ACT, 1877, s. 4.

See PLAINT—REJECTION OF PLAINT.
[1 N. W., 17
11 W. R., 177
2 Mad, 436
I. L. R., 9 Bom., 355
I. L R, 13 Bom., 517

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING
[I. L. R., 18 Calc, 445

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL
[I. L. R., 13 All., 580
I. L R, 20 Bom, 791

1 BENGAL REGULATIONS

Beng Reg. XII of 1826—*Receipt for Government paper* —Under the old Stamp Law (Regulation XII of 1826, which was not registered by the Supreme Court), agreements not on stamped paper executed in Calcutta *bond fide* by parties residing or carrying on business therein

STAMP—*continued.*

1. BENGAL REGULATIONS—*concluded.*

when there was no intention of pleading such documents in the mofussil Courts, were held to be good and binding. GOURY CHURN MOOKERJEE *v.* JOGENDRONATH MOOKERJEE W. R., 1864, 289

— Beng Reg. X of 1829.

See STAMP ACT, 1879, SCH. I, ART. 49. [I. L. R., 7 Calc., 594

—————— s. 31—*Stamp Act (X of 1862)—Mirasi pottahs*—Mirasi raiyati pottahs, where not required either by the old (Act X of 1829, s. 31) or new Stamp Law (Act X of 1862), to be written on stamped paper. MOHEEBOODDEEN AHMED *v.* PRANNATH ROY CHOWDHRY [3 W. R., Act X, 142

2 BOMBAY REGULATIONS.

——— Bom. Reg. XVIII of 1827—*Will.*—Regulation XVIII of 1827 did not require a will to be stamped during the testator's lifetime. WEBBE *v.* LESTER . 2 Bom., 55: 2nd Ed., 52

1. —— s. 10—*Construction of section.*—An objection to the validity of a document under Regulation XVIII of 1827, as distinguished from its inadmissibility in evidence, or from a prohibition to Courts of Justice or public officers to act upon it, was an objection on the merits under Act VIII of 1859. Where two documents were executed in the Island of Bombay, respectively, under date the 29th August 1851 and 4th August 1852 and did [illegible]

strictly construed, and although the High Court believed that those documents were actually intended to operate, so far as the particular property in question in the suit was concerned, in the zillah of Tanna, the High Court declined to hold "expressly" to mean the same as "actually," as nothing appeared on the face of the documents to show where the property mentioned in them was situated. GIRDHAR NAGJISHET *v.* GANPAT MORODA 12 Bom., 129

2. ——— *Signed account—Evidence when unstamped.*—A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be made use of in evidence to support a claim to interest on that balance, unless it be stamped; but it may be used as a samadaskut or simple admission of a balance due, although not stamped. DHONDU JAGANNATH *v.* NARAYAN RAMCHANDRA [1 Bom., 47

3. ——— sub-s (3)—*Mortgage—Lease—Counterpart.*—Where an agreement between a mortgagor and mortgagee contained a stipulation that the mortgagor should, at the time of redemption, make good the losses arising to the mortgagee from the default of tenants, which it had been

STAMP—*continued.*

2. BOMBAY REGULATIONS—*continued.*

agreed the mortgagee might put in, in case the mortgagor made default in payment of the rent [illegible]

against losses to be incurred after the determination of the lease, which, not having any operation so long as the lease was in existence, was therefore not exempt from stamp duty under that Regulation. Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. RAM KRISHNA GOPAL *v.* VITHU SHIVAJI 10 Bom., 441

——— s. 12, sub-s. (2)—*Suit to recover possession of immoveable property—Practice.*—In a suit by plaintiff to recover possession of certain immoveable property under a deed of sale executed to him by the defendants' father, while Regulation XVIII of 1827 was in force upon one-anna stamp paper, a question having arisen as to what stamp duty the deed should bear for the purposes of the suit, it was referred to the High Court. *Held* that the deed was sufficiently stamped under sub s. (2), s. 12 of Regulation XVIII of 1827, but the plaintiff [illegible]

1. ——— s. 13—*Intention to defraud revenue*—On documents insufficiently stamped under Regulation XVIII of 1827 the question did not properly arise, under s. 13 of that Regulation, whether the intention of the parties in not sufficiently stamping them was to defraud Government of its revenue. That question was rendered important, first, by s. 13 of Act XXXVI of 1860, and subsequently, in a more explicit manner, by s. 15 of Act X of 1862. KASTUR BHAVANI *v.* APPA [I. L. R., 5 Bom., 621

2. ——— *Right to have document stamped—Intention to* [illegible]

evade the stamp duty. ANIAJI NILKANTH *v.* JANARDAN VASUDEV . 10 Bom., 358

3. ——— and s. 14—*Bond stamped after death of grantor*—A bond or other writing, stamped after the death of the grantor, is valid against his heirs. The personal representatives, or other persons claiming as heirs and kindred of a deceased grantor, stood with regard to ss. 13 and 14 of Regulation XVIII of 1827, in the same position as the deceased grantor would, and were not third parties within the meaning of s. 14. The previous decisions of the late Sudder Court to the contrary overruled. RAGHIA *v.* DHARMA JHATU 1 Bom., 52

STAMP—*concluded.*

2. BOMBAY REGULATIONS—*concluded.*

1. — — — s. 14, sub-s. (1)—*Deed of sale of property given in gift from what time operative.*—A donee of the grantor was a third party within the meaning of Regulation XVIII of 1827, s. 14, sub-s. 1, and therefore, as against him, a deed of sale of the property given in gift was only valid from the date on which it was stamped. Precedents on this point questioned, but followed. JAGANNATH VITHAL *v.* APAJI VISHNU 5 Bom., A. C., 217

2. — — — *Purchaser at sale in execution of decree—Validity of mortgage-deed.*

that on which it was stamped. *Jagannath Vithal v. Apaji Vishnu, 5 Bom., A. C., 217,* followed. NARAYAN DESHPANDE *v.* RANGUBAI [I. L. R., 5 Bom., 127

3. MADRAS REGULATIONS.

— Mad. Reg. XIII of 1816—*No provision for payment of penalty—Secondary evidence of unstamped document.*—In a suit to redeem a mortgage of 1833, executed upon an unstamped cadjan, liable to stamp duty under Regulation XIII of 1816, secondary evidence of the contents of this document was tendered on payment of a penalty. *Held* that the evidence could not be admitted. KOPASAN *v.* SHAMU . I. L. R., 7 Mad., 440

— Mad. Reg. II of 1825, s. 4—*Deed transferring property conditionally—Ad valorem stamp duty.*—An instrument, dated 1853, which

[I. L. R., 10 Mad., 216

STAMP ACT (XXXVI OF 1860).

— Security bond given to abkari renter.—A security bond executed by a third party to the abkari renter is not exempt from stamp duty. RAMASVAMI CHETTI *v.* PAPPA REDDI 1 Mad., 190

— s. 14—*Bond executed on optional stamp.*—No larger sum could be recovered under s. 14, Act XXXVI of 1860, upon a bond executed on an optional stamp than that optional stamp covers, and no amount of penalty can make up the deficiency in the stamp. KERAMUT ALI *v.* ABD OL WAHAB [17 W. R., 131

1. — — sch. A and s. 14—*Promissory note containing agreement to waive jurisdiction.*—A promissory note containing an agreement by the

STAMP ACT (XXXVI OF 1860)—*concluded.*

maker that, in case of any dispute or difference arising concerning the payment of the note or the subject-matter thereof, the same shall and may be sued in the Supreme Court, and "to the jurisdiction of which I hereby waive and agree to waive all pleas," properly stamped as a promissory note, did not require an additional stamp as an agreement under Act XXXVI of 1860, sch. A, and s. 14. RAKHALDASS SINGHEE *v.* ROY CHUNDER DUTT [1 Ind. Jur., O. S., 124

2. — sch. A, art. 4—*Promissory note.*—An instrument to the following effect: "On the 14th December 1861 we, *A* and *C*, bind ourselves

SAHIB . . . . . . 1 Mad., 152

3. — sch. A, art. 20—*Partnership agreement.*—An agreement on a R24 stamp paper between *A*, who had obtained from Government the abkari farm of a certain talukh, and *B*, stipulating that, in consideration of R2 000 advanced by *B* for payment of deposit, the whole management should reside in *B*; that the parties should each have a half share and be respectively entitled and liable to profit and loss in respect of his share; that they should

the stamp to be affixed to a document, the state of things at its execution is alone to be regarded. CHINNAIYA NATTAN *v.* MUTTUSVAMI PILLAI [1 Mad., 326

STAMP ACT (X OF 1862).

— s. 3.

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . . 7 Mad., Ap., 9

1. — *Offence under section—Engrossing deed on unstamped paper.*—The mere engrossing of a deed on unstamped paper was not an offence under s. 3 of Act X of 1862, nor did the signing such deed as a witness constitute any such offence. REG. *v.* JETHA MOTI. REG. *v.* VIRJI KUVARJI . . 2 Bom., 135: 2nd Ed., 129

REG. *v.* JOTI BIN SATU . . 1 Bom.,

2. — *Penalty — Attesting nesses and persons drafting documents.*—The in s. 3 of Act X of 1862, "unless in any case which a higher penalty is imposed" and "not ing," apply both to the penalty of R100, and

STAMP ACT (X OF 1862)—*continued.*

be a party to," used in the section, and are therefore not punishable under it. ANONYMOUS [3 Mad., Ap., 27

3. ——— and s. 52—*Omission to get sanction of Collector.*—A prosecution under s. 3, Act X of 1862, not having been authorized by the Collector of the Stamp Revenue for the district or

[illegible]

[. R., 103

1. ——— s. 14—*Documents improperly stamped Evidence, Admissibility in* —Documents not bearing proper stamps under Act X of 1862 are not admissible in evidence even to show the terms of the deed as against the party producing the same. OOMRAO SINGH *v.* METHAB KOONWER [3 Agra, 103a

2. *Act XXXVI of 1860*—*Bond stamped after suit.*—A bond stamped subsequently to the institution of a suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862, provided it be properly stamped when produced at the first hearing of the suit and when the Court is asked to receive it in evidence ATMARAM GULABHAI *v.* AMICHAND RUPCHAND 3 Bom., A. C., 92

3. ——— *Calculation of stamp duty*—*Nature of instrument* In determining the stamp required for any particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title is a misnomer. PENDSE *v.* MALSE [3 Bom., A. C., 94

4. ——— *Single document containing two contracts and bearing one stamp*—*Allowance of value of stamp.*—Where a document contained

[illegible]

CHIMNAJI . . . . 6 Bom., A. C., 95

5. *Copies of record of criminal trial*—*Liability to stamp duty* —With the exception of the depositions of the witnesses and the documentary evidence and copies of the final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentence were required by s. 416 of the Code of Criminal Procedure, 1861, to file with their petitions of appeal, when the party who was desirous of appealing was in

[illegible]

cants on stamp paper ANONYMOUS [4 Mad., Ap., 58

6. ——— *Transfer of tenure*—*Admissibility in evidence.*—The transfer of an under-tenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence, unless it be stamped as though it were a separate deed. TEYAI ABOM *v.* GAGAI GUHA CHAWA . 3 B. L. R., Ap., 30

S. C. PITAYE AHUNG *v.* GIRGHEE KORE AJOOAH [11 W. R., 325

7. *Surrender of equity of redemption*—*Unstamped endorsement.*—Where the defendant executed in favour of the plaintiff what purported to be a deed of absolute sale, but an ikrar executed contemporaneously reserved the right of redemption to the defendant, and the plaintiff alleged he had surrendered it by returning the ikrar,—*Held* that, as the original deed was, on the face of it, an absolute sale, and as the effect of it was merely controlled by the ikrar, the return of the latter extinguished the equity of redemption. A separate document requiring a separate stamp was unnecessary. RAJ COOMAR SINGH *v.* RAM SUHAYE ROY [11 W. R., 151

——— s. 15.

See STAMP ACT, 1879, s. 34. [I. L. R., 14 Mad., 255

——— s. 15, sub-s. (6)—*Application for remission of stamp duty in pauper suits.*—It is not the duty of a Civil Court to receive and submit to the Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the stamp law; the pauper should himself make timely application under sub-s. 6, s. 15, Act X of 1862. GOLAM GUFFOOR *v.* EKRAM HOSSEIN CHOWDHRY [10 W. R., 358

——— ss. 15 and 17.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.
[3 B. L. R., A. C., 126, 235
5 B. L. R., Ap., 10
7 B. L. R., 653
I. L. R., 5 Bom., 621
3 Mad., 321
3 Mad., 71

——— s. 17.

See APPEAL—ACTS—STAMP ACT, 1862. [3 Bom., O. C., 153

1. ——— *Insufficient stamp.*—S. 17 of Act X of 1862 only applied to the reception of documents under s. 15, which had been insufficiently stamped, not to documents on which there was no stamp. Such documents should not be received at all. LALJI SINGH *v.* AKRAM SER [3 B. L. R., A. C., 235: 12 W. R., 47

2. ——— *Intention to evade stamp laws.*—A bond, executed between a plaintiff who sued

[illegible]

STAMP ACT (X OF 1862)—*continued.*

you may have to pay shall be made good by us, with interest." The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp laws, and refused to receive evidence to the contrary He also refused to admit the bond in evidence *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the stamp laws. The Judge might have inferred from it that it was the intention of the parties to evade the stamp laws, but in that case he should have heard evidence to the contrary SASHI BHUSHAN BANERJEE *v* TARACHAND KAR

[3 B. L. R., A. C., 329: 11 W. R., 553

3. ——————— *Intention to evade payment of duty.*—A Court to which a document is tendered in evidence under this section ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty ROYAL BANK OF INDIA *v* HORMASJI KHARSEDJI

[3 Bom., O. C., 153

4. ——————— *Permission to pay penalty where document is lost.*—*Quære*—Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. ARUNACHELLUM CHETTY *v.* OLAGAPPAH CHETTY . 4 Mad., 312

5. ——————— *Hundi*—*Inadmissibility in evidence for want of stamp.*—The plaintiff brought a suit against three defendants under the following circumstances The third defendant was the tenant of a village under the second defendant, the first defendant being the agent and manager of the second defendant. The third defendant owed the second defendant a sum of money on account of rent, and drew a hundi on the plaintiff for R1,000 to be paid to the first defendant or order, and containing these words "For which amount I shall deliver over to you grain in that village and its hamlets, and for which the Dewan (first defendant) will issue an order to the above effect" The hundi was upon a one anna stamp. Plaintiff, on receipt of this hundi, drew upon the back of it another hundi upon his [illegible]

[illegible]

engagement. The Civil Judge decreed for the plaintiff. On appeal.—*Held* by the High Court, reversing the decision of the Civil Court, that the second hundi [illegible]

STAMP ACT (X OF 1862)—*continued.*

6. ——————— and s. 15 — *Intention to evade payment of duty*—*Jurisdiction* —In a suit brought in a Small Cause Court to recover money, [illegible]

[illegible]

[13 W. R., 102

7. ——————— *Insufficiently-stamped document*—*Procedure*—*Admissibility in evidence* — The plaintiff sued his elder brother for a share in certain family property. The defendant raised a [illegible]

[illegible]

sufficient stamp of two annas put upon it. The [illegible]

[illegible]

1 ——————— s. 22—*Promissory* [illegible] —A promissory note is sufficiently [illegible] stamp covers the principal sum named [illegible] without reference to the interest. [illegible]

[2 B. L. R., O. C, 165: 12 W. [illegible]

2 ——————— *Promissory* [illegible] *sibility in evidence* —*A B*, by [illegible] writing, dated 6th August, pro[illegible] "on demand," R4,310-13-3. [illegible] instrument was written due "[illegible] nexed to *A B*'s signature was [illegible] "The sum of R4,310 12 6 [illegible] the 5th of August." *Held* [illegible] properly stamped as a [illegible] demand, and ought to have been [illegible] *Per* PEACOCK, *C.J.*—[illegible] demand ought to be stam[illegible] ing there may be a collat[illegible] parties that the holder [illegible] time, or if paid on [illegible]

STAMP ACT (X OF 1862)—*continued.*

entitled to discount. CHANDRAKANT MOOKERJEE *v.* KARTICKCHARAN CHAILE
[5 B. L. R., 103: 14 W. R., O. C., 38

3. ——————— *Promissory note—Ambiguity.*—Where the wording of a promissory note bearing a one anna stamp appears to be ambiguous as to whether it is payable on demand, the Court will take the evidence of the parties as to the intention, and will then decide whether it is properly stamped. Under such circumstances, the Court will take evidence of usage. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SEDGWICK . 1 Ind. Jur., N. S., 107

—— s. 26.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[1 Mad., 217
12 W. R., 176

—— *Refund of stamp duty — Commencement of suit.*—*Held* that, for the purpose of refund of half stamp duty under s. 26 of Act X of 1862, the hearing of a suit in a Small Cause Court commenced when proof of the service of the summons was taken on the day appointed for the hearing; and where proof of the service of the summons had been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. AMIRCHAND JAMNADAS *v.* MAGGAN AMTHU 4 Bom., A. C, 176

—— s. 27—*Right to recover on contract only amount covered by stamp where stamp is optional.*—Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiffs cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract the defendants admitted that a sum of R3,328-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against [illegible]

—— s. 32—*Appeal on valuation of claim.*—Under s. 32, Act X of 1862, an appeal relating to the valuation of a claim can be entertained by the High Court. BABOO MAD FUROSH *v.* HURRE PANDEY . . . . . 11 W. R., 479

—— s. 50, sub s. (2)—*Jurisdiction of Collector—Offence under Criminal Procedure Code (Act XXV of 1861), ss. 169, 171.*—An application was made to a Collector under s. 50, sub-s. (2), Act X of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. *Held* that, the document not having been given in evidence in any proceeding in Court, the Collector was not bound to proceed under ss. 169, 171 of the Criminal Procedure Code. QUEEN *v.* GOUR MOHAN SEN
[3 B. L. R., A. Cr., 6: 11 W. R., Cr., 48

—— sch. A, art. 1—*Promissory note for payment of grain.*—An instrument in the form of a promissory note for grain should be stamped, under art. 1 of sch. A of Act X of 1862, with a stamp of the value of one rupee. LACHIRAM JAYARANGJI *v.* RAMJI BIN SHIVAJI . . 6 Bom., A. C, 107

—— art. 3—*Petition for a lease*— [illegible]

sch. A, Act X of 1862. CHOONEE MUNDUR *v.* CHUNDEE LALL DASS . . . 14 W. R., 334

Affirming on review S. C. . 14 W. R., 178

1. ——————— art. 4—*Agreement—Bond.*—In a suit for breach of contract to cultivate and deliver indigo for recovery of the amount specified in the contract,—*Held* the stamp duty depended on the amount of consideration for the undertaking. DOYLE *v.* MUNDAREE MUNDUL
[5 W. R., S. C. C. Ref., 10

2. ——————— and art. 15—*Agreement to supply cotton.*—An agreement to supply cotton in consideration of a sum of money received should be stamped under art. 4 and not under art. 15, sch. A, Act X of 1862. SAMSUDDIN SULTAN *v.* RAMJI BHIKA 5 Bom., A. C., 151

1. ——————— art. 10—*Promissory note—Bond.*—A promissory note, attested by a witness, does not require to be stamped as a bond under Act X of 1862, sch. A, art. 10. The words in that clause "not being a bond, instrument, or writing bearing the attestation of one or more witnesses," referred only to the preceding words, "other order or obligation for the payment of money." Also the words "bearing the attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond." GLADSTONE *v.* SADDO CHURN DUTT
[3 Ind. Jur., N. S., 203

2. ——————— *Promissory note.*—In a suit, brought by a joint-stock company in liquidation against a former director of the company, for R27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand, but with the words in pencil "due 4th June" put on it, the same day it was signed, in accordance with an understanding between the defendant and the other directors that they would not press him for payments before the latter date, and signed by the defendant some days after the day it bore date,—*Held* that a one anna stamp was not sufficient under sch. A, art. 10, of Act X of 1862. EASTERN FINANCIAL ASSOCIATION *v.* PESTANJI CURSETJI
[3 Bom., O. C., 9

3. ——————— *Written direction by master to servant for payment of money.*—A written direction given by a master to a servant for the payment of money belonging to the former in the hands

STAMP ACT (X OF 1862)—*continued.*

of the latter was held to be not an order for the payment of money within the scope of the terms used in art. 10, sch. A, Act X of 1862, as amended by Act XXVI of 1867. PUTTULWANT RAO *v.* FUTTEHOODDEEN . . 1 N. W., Ed. 1873, 143

1. ———— art. 12—*Security bonds for costs of appeal to Privy Council.*—Security bonds for costs of appeal to the Privy Council come within art. 12, sch. A, Act X of 1862, and ought to be executed on a stamp as therein specified. SOONJHAREE KOONWUR *v.* RAMESSUR PANDEY [5 W. R., Mis., 47

2. ———— *Solehnamah admitting satisfaction of decree — Petition — Agreement — Act XXVI of 1867, art. 10* —In a suit upon a bond for R40 with interest, the defendant filed a solehnamah admitting that the amount due from him was R25 and agreeing to pay that sum by instal-

LALLMON SHEIKH. PUNCHANUN SIRCAR *v.* GUNESH MUNDUL . . . . . 8 W. R., 214

———— art. 18—*Penalty—Obligation for payment of money.*—Where the parties to an agreement added to the stipulations which it contained a provision whereby a sum of money was made payable by way of fine or penalty, in the event of the non-performance, at the appointed time, of the work contracted to be done, such a provision was held to be in the nature of an obligation for the payment of

———— art. 42 — *Lease — Instrument*

was not liable to be stamped, by virtue of the exemption of art. 42, sch. A of Act X of 1862. SAMINATHAIYAN *v.* SAMINATHAIYAN . 4 Mad., 153

1 ———— art. 43—*Sanad to gomashta to collect rents.*—A sanad, which authorized a gomashta to collect rents, and to sue for them, requires

2 ———— *Instrument operating as power-of-attorney* — *J M* executed in favour of *P* an instrument authorizing *P* to recover, by suit or otherwise, from Messrs. *W* and *N*, a sum of R22,500 (or thereabouts) which contained this clause: "From whatever sum *P* may recover from *W* and *N* he is to

STAMP ACT (X OF 1862)—*concluded.*

pay himself the sum of R8,610 which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me." *Held* that the above instrument operated as a power-of-attorney, and not as an assignment, and was properly stamped under Act X of 1862, sch. A, art. 43, with a stamp of R1. PESTANJI MANCHARJI WADIA *v.* MATCHETT . . . 7 Bom., A. C., 10

———— art. 54—*Deed of partition—Each sharer's copy of an instrument.*—Under Act X of 1862, sch. A, art. 54, each sharer's copy meant each sharer's part

. . . I. L. R., 5 Bom., 299

1. ———— sch. B, art. 11—*Suit for declaration of title to portion of land paying revenue to Government—Interest in land.*—A suit for the

"an interest in land" should be valued according to the provisions of note (*e*), art 11, sch B, Act X of 1862 RAJ CHUNDER ROY *v.* CHUNDEER CHURN NAIK [8 W. R., 437

2. ———— *Time for obtaining copy of decree.*—The rule of circular No. 31,

paper filed under the general rule

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cl. (*d*) must be read as meaning revenue or rent, whether to Government or to a zamindar. GOPEE MOHUN MOJOOMDAR *v.* MACKINTOSH 9 W. R., 395

STAMP ACT (XXVI OF 1867)

See UNDER COURT FEES ACT, XXVI OF 1867.

STAMP ACT (XVIII OF 1869).

See GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 3 . 7 Mad., Ap., 9.

1. ———— *Insufficiency of stamp.*—The Civil Court is authorized, under Act XVIII of 1869, to receive the proper amount of stamp which should have been affixed on the plaintiff's pottah under the law in force when it was executed. MAHOMED RIJAH *v.* COLLECTOR OF CHITTAGONG [6 B. L. R., Ap., 117: 15 W. R., 118

STAMP ACT (XVIII OF 1869)—*continued.*

2. ——————— *Agreement executed both in England and India—Liability to stamp duty—Admissibility in evidence.*—An agreement was first executed in England by *D* and *E*, and by *A*, the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England, and it was subsequently executed in India by *B* and *C*, the other two partners, but not stamped with an Indian stamp. *Held* that the agreement was liable to Indian stamp duty, and was not admissible in evidence unless and until the proper stamp duty and penalty under Act XVIII of 1869 were paid. OAKES *v.* JACKSON

[I. L. R., 1 Mad., 134

3. ——— *Orders on tenants to pay rent to person to whom landlord has executed release.*—Orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord are not documents which the law requires to be stamped, and ought not to be rejected as evidence on the ground of their not being stamped. BUKSHEE KUNNEE LALL *v.* THAKOORNATH SAI . . . . . 25 W. R., 80

1. ——— s. 3, sub-s. (5)—*Bond—Definition of bond.*—The definition of the word "bond" in the Stamp Act of 1869 is not exhaustive; the word "includes" in sub-s. 5 of s. 2 has an extending force, and does not limit the meaning of the term to the substance of the definition. IN THE MATTER OF THE PETITION OF NASIBUN. NASIBUN *v.* PREOSUNKER GHOSE . . . I. L. R., 8 Calc., 534

2. ——— *Entry of loan in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of sub-s. (5) of s. 3 of Act XVIII of 1869. QUEEN *v.* BULDEO . . . . . 2 N. W., 453

1. ——— sub-s. (11)—*Conveyance.*—An instrument, which purports to convey two or more properties for a sum of money, composed of items described in the instrument as the values of those properties, is simply a deed of sale coming under the definition of "conveyance" in Act XVIII of 1869, s. 3. The stamp duty, properly leviable upon such an instrument, should therefore be calculated upon the aggregate sum specified therein, and not upon the various items composing that sum. IN RE TUKARAM HARI ATRE . . 10 Bom., 354

2. ——— *Sale-certificates—Conveyance—Mad. Act VIII of 1865, ss. 35 and 40*—Certificates of sale issued under ss. 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty. ANONYMOUS . 8 Mad., 112

1. ——— sub-s. (15)—*Lease—Contract to pay sum of money in consideration of a grant.*—An engagement by a proprietor of land to pay to a [illegible]

STAMP ACT (XVIII OF 1869)—*continued.*

2. ——— *Second lease altering first stamped and registered.*—After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it requires, under the Stamp Act, to be itself stamped with the stamp provided for a lease. BYJNATH DUTT JHA *v.* PUTSOHEE DOBAIN

[20 W. R., 36

——— sub-ss. (18) and (20) and sch. I, art. 10—*Mortgage—Pledge by letters of assignment of property not in esse.*—*M*, the manager [illegible]

manufactured in the season, and they enclosed a form of assignment for *M*'s signature, which he duly [illegible]

stam[illegible] by [illegible] bein[illegible] plai[illegible] and [illegible] thei[illegible] attached before judgment and sent to Calcutta for sale. The plaintiffs now sued *A*, *B*, *M*, and the [illegible]

letters of assignment to the plaintiffs were not mortgages within the definition of the Stamp Act, XVIII of 1869, and that the proper stamp to be affixed to such document was a stamp of 8 annas. MORAN *v.* MITTU BIBEE . . . I. L. R., 2 Calc., 58

1. ——— sub-s. (25)—*Promissory note insufficiently stamped—Express contract.*—A suit on a promissory note payable on demand which was not stamped was held to have been rightly dismissed, the note being inadmissible as evidence with reference to Act XVIII of 1869 [illegible]

2. ——— *Promissory note*—[illegible] The defendant [illegible] from [illegible] 78. [illegible] *B* [illegible] *A* [illegible] he [illegible] he [illegible]

C.J., dissenting) that such instrument was a "promissory note" within the meaning of the Stamp Act

STAMP ACT (XVIII OF 1869)—*continued.*

of 1869, and not a "bond" or "an agreement not otherwise provided for," within the meaning of that Act BANSIDHAR *v.* BU ALI KHAN

[I. L. R., 3 All., 260

3. ———————— and sch. II, art. 5—*Note or memorandum acknowledging debt—Promissory note—Insufficiently stamped document, Admissibility in evidence of.*—The plaintiff sold and delivered certain goods to the defendant. The defendant gave the plaintiff, in respect of the price of such

from the defendant R200, and interest on that amount at 12 per cent per annum from the 14th November 1877 to the date of suit. *Held* by STUART, *C.J.*, and PEARSON, *J.*, and OLDFIELD, *J.*, and

an acknowledgment of such debt *Per* SPANKIE, *J.*, treating the suit as based upon a promissory note, that such instrument, being insufficiently stamped, was not admissible in evidence. KANHAYA LAL *v.* STOWELL . . . I. L. R., 3 All., 581

See BENARSI DAS *v.* BHIKARI DASS

[I. L. R., 3 All., 717

GOPAL CHAND MARWAREE *v.* MOHOKOOM KOOAREE . . . . I. L. R., 3 Calc., 314

and AKBAR *v.* KHAN . . I. L. R., 7 Calc., 256

———— s. 4—*Document executed in foreign territory.*—An unstamped instrument executed in foreign territory, and valid under the law of the place of execution, is admissible as evidence in Courts of British India, provided it does not affect any property situated in British India (Act XVIII of 1869, s. 4) NARAYAN SADASHIV *v.* BAPUJI BALAL . . . . 7 Bom., A. C., 140

———— s. 9—*Account stated—Interest.*—Under Act XVIII of 1869, s. 9, a one-anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest. GIRDHAR NARAN *v.* UMAR AJU

[I. L. R., 4 Bom., 326

1. ———— s. 18—*Admission in written statement and*

an admission as renders it unnecessary for the plaintiff to put the written contract in evidence

2. ———————— and sch. I, art. 14, and sch. II, art. 28—

STAMP ACT (XVIII OF 1869)—*continued.*

1878, the said sum had been entrusted to defendant Nos. 1 and 2 for investment on *D*'s account, and had been advanced by them as a loan to defendant No. 3. The defendants alleged that the money was originally

RUSTOMJI EDULJEE CROOS *v.* CURSETJEE SORABJEE CROOS . . I. L. R., 4 Bom., 349

3. ———————— *Document referred to as*

———— s. 19.

See STAMP ACT, 1879, s. 26

[I. L. R., 3 Mad., 342

———— s. 20.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

[I. L. R., 4 Calc., 213

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.

[10 Bom., 406

1. ———————— *Hundi—Insufficient stamp—Evidence—Penalty.*—Insufficiently-stamped hundi

2. ———————— *Bond written partly on one and partly on another paper—Deficiency in stamp.*—A bond written partly on one and partly on

STAMP ACT (XVIII OF 1869)—*continued.*

stamp paper, the two aggregating the proper stamp leviable, was tendered in evidence without the certificate required by s. 49 of the Stamp Act. *Held*

ANONYMOUS . . . 7 Mad., Ap., 36

3. — *Lost deed proved to be unstamped.*—In cases where a lost deed is shown not to have been stamped, the Court should require the same money to be paid, as if the deed itself were produced. HARAN CHUNDER BHOOREE *v.* RUSSICK CHUNDER NEOGY . . . 20 W. R., 63

4. — and s. 22—*Admission of unstamped document on payment of penalty.*—

— s. 24 and ss. 29 and 44—*Evasion*

person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by

CHAND PODDAR . . 24 W. R., Cr., 1

1 — s. 28—*Document requiring anna stamp—Stamp affixed subsequently to execution of document.*—A document which by law requires a one-anna adhesive stamp to be affixed must be received

YAN GOPAL . . .

NOOR BIBEE *v.* RUMZAN . . 24 W. R., 198

KALI CHURN DAS *v.* NOBO KRISTO PAL [9 C. L. R., 272

STAMP ACT (XVIII OF 1869)—*continued.*

2. — *Power to receive in evidence unstamped note on payment of penalty.*—Under s. 28 of Act XVIII of 1869, a Court has no

3. — *Promise to pay money and grain—Promissory note.*—A document which contains a promise to pay money and a certain quantity of grain is not a promissory note for the purpose of the General Stamp Act, 1869, s. 28. MUTTU CHETTI *v.* MUTTAN CHETTI . . I. L. R., 4 Mad., 296

4. — *Promissory note—Admissibility in evidence.*—In a suit brought on the following document, dated 25th October 1869:

Held the Judge was bound to comply with Act XVIII of 1869, and was therefore right in refusing to receive the document. *Held* also the document was a promissory note within s. 28, Act XVIII of 1869. NANDAN MISSER *v.* CHATTER BATI [13 B. L. R., Ap., 33

S. C. NUNDUN MISSER *v.* CHITTUR BUTTEE [21 W. R., 446

5. — *Promissory note—Insufficiency of stamp.*—The following document, bearing a one-anna stamp, was admitted by the Court of

negotiating for a loan from another place. Rest assured no harm will come to your money, and for your satisfaction and security this note of hand is given to you. Keep this as a voucher and consider

6. — *Document on one-anna stamp—Admissibility in evidence on payment of penalty.*—A promissory note upon a one-anna stamp dated in August 1870 provided for the repayment

STAMP ACT (XVIII OF 1869)—*continued.*

[illegible]

1. ———— s. 29—*Prosecution by Collector—Intention to evade payment of stamp duty.*—A Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s. 29, Act XVIII of 1869, had any intention to defraud by evading payment of stamp duty EMPRESS *v.* DWARKANATH CHOWDHRY I. L. R., 2 Calc., 399

2. ———— *Intention to evade payment of duty—Donor and donee of deed of gift*—Intention to evade payment of stamp duty is not an essential ingredient in the offence described in s 29 of Act XVIII of 1869 *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section ANONYMOUS . 6 Mad, Ap., 5

———— ss. 34 and 41 and sch. II, arts. 5 and 20—*Collateral instrument—Policy of Insurance—Assignment and re-transfer by endorsement.*—A policy of insurance bore three endorsements the first, an assignment of all the right, title, and interest of the assured to the P Bank; the second, a retransfer from the P Bank to the assured, all claims having been satisfied; the third, an assignment by the assured similar to the first assignment to Messrs. *B R S & Co* *Held* by MARKBY and AINSLIE, *JJ*, that the first and third endorsements were liable, as collateral instruments under sch. II, art. 20, of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty *Held* by GARTH, *C.J.*, that none of the endorsements were chargeable with duty IN THE MATTER OF THOMPSON'S POLICY . . I. L. R., 3 Calc., 347

———— ss. 39-40-*Promissory note*—*Evidence.*—A promissory note, not payable on demand, executed on unstamped paper, was brought to a Collector, under s 39 of Act XVIII of 1869, for adjudication as to the proper stamp, who, upon the [illegible]

———— s. 43

See COLLECTOR I. L. R, 2 All., 806

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—STAMP ACT, 1869 [I. L. R., 3 Calc, 622

1 ———— sch. I and sch. II, art. 11—*Bond for payment of money.*—The plaintiffs drafted the following letter, dated 5th June 1871, and sent it to the defendant for signature "I have this day sold to you 500 to 700 cases of first quality of hogs' lard of my manufacture and mark, at R43 per case of eight tins of ten seers each, or two bazar maunds nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any [illegible]

one anna. In an action for a breach of the contract, *it was tendered in evidence by the plaintiffs, and objection* was taken to it that it was insufficiently stamped, and that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII of 1869, sch. I. *Held* it was a document which required an 8 anna stamp only under art. 11 of sch. II of the Act, and the document was admitted on payment of the stamp and penalty. ROBERT AND CHARRIOL *v.* SHIRCORE [7 B. L. R., 510

2. ———— *Letter assigning chose in action out of British India.*—A letter by which a chose in action (a debt) was equitably assigned does not require a stamp where the chose in action is not in British India at the time of the assignment. MEGJI HANSRAJ *v.* RAMJI JOITA [8 Bom., O. C., 169

1. ———— art. 15—*Conveyance—Shares in public company—"Amount."*—No *ad valorem* stamp duty is payable under Act XVIII of 1869 upon a conveyance where the consideration consists of shares in a public company made over to the vendor. The word "amount" in art. 15, sch. I of that Act, signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out-and-out conveyance. IN THE MATTER OF PORT CANNING LAND COMPANY [16 W. R., 208

2. ———— *Conveyance — Indem-* [illegible] [I. L. R., 1 Mad., 133

1. ———— sch. II, art. 5—*Adjustment of account.*—An adjustment of account is not admissible

STAMP ACT (XVIII OF 1869)—*continued.*

in evidence unless stamped with a one-anna stamp. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN [2 C. L. R., 346

2. ——— *Balance of running account.*—In a running account, a balance brought forward from the close of a previous year is not to be considered a new balance requiring a fresh stamp; Act XVIII of 1869, sch. II, art. 5, providing for one stamp only to be affixed in such a case. INDRA CHAND ASWAL *v.* KALEE DOSS MITTER [24 W. R., 439

3. ——— *Note or memorandum balancing an account.*—On the 9th October 1875 the book containing the accounts between the plaintiff and defendant kept by the plaintiff was examined

book,"—*Held* that the entry of the balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in art 5, sch. II of Act XVIII of 1869, and did not therefore require to be stamped NAND RAM *v.* RAM PRASAD [I. L. R., 2 All., 641

4. ——— *Hath-chitta—Balance of accounts.*—A hath-chitta, drawn up by only one of two parties to a money transaction, and purporting to represent the balance of accounts between them but not assented to in any way by the other party, is not such a document as is contemplated by art 5, sch. II of the General Stamp Act, and does not require to be stamped. KOONJO MOHUN DOSS *v.* KRISHNA CHUNDER SHAHA . 25 W. R., 361

5. ——— *Stamp on entry in hath-chitta.*—When an account in a hath-chitta has two sides to it, the one headed "amount advanced" and the other headed "amount received," and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under art. 5, sch. II of Act XVIII of 1869. BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI [I. L. R., 4 Calc., 885: 3 C. L. R., 520

BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA . . . I. L. R., 9 Calc., 127

——— art. 5 and art. 11.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R., 4 Calc., 213

——— art. 7—*Bank memorandum—Receipt.*—A bank memorandum informing one of their customers that money has been paid to his account by a third person, and has been credited to that account, does not require to be stamped under art. 7, sch. II of Act XVIII of 1869. IN THE MATTER OF ACT XVIII OF 1869, AND OF THE UNCOVENANTED SERVICE BANK [I. L. R., 4 Calc., 829: 3 C. L. R., 597

1. ——— art. 11—*Agreement to remunerate pleader for his services.*—Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnama, or in a separate document, the document containing the agreement must bear a stamp of adequate value. NUTHOO LALL *v.* BUDREE PERSHAD . . 3 Agra, 286

2. ——— and s. 14—*Agreement—Bond.*—When an instrument consisted of two parts, the first containing a promise to repay with interest a sum of R12-8-0 and the second a further promise to give a quantity of grain,—*Held* that, as an agreement, the instrument required a stamp of 8 annas under s. 14 of Act XVIII of 1869 and sch. II, art. 11; but that, as a simple money bond, it was properly stamped with a stamp of 2 annas, and that, if the promisee abandoned his claim for grain, he could recover upon it the principal sum advanced with interest. CHIMNAJI *v.* RANU . I. L. R., 4 Bom., 19

3. ——— *Bond—Agreement with covenant sounding in damages.*—An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond, and requires an 8-anna stamp only. Remedies on such an instrument and on a bond discussed. GISBORNE & Co. *v.* SUBAL BOWRI [I. L. R., 8 Calc., 284: 10 C. L. R., 219

4. ——— and sch. I, art 5—

5. ——— *Agreement.*—A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him ... back

KURAMCHAND . I. L. R., 4 Bom., 328

6. ——— *Receipt for money and stipulating payment of interest.*—An instrument which acknowledged receipt of a sum of money and provided for the payment of interest at a specified rate per mensem was held to be an agreement falling within Act XVIII of 1869, sch. II, art. 11. FERRIER *v.* RAM KALPA GHOSE . 23 W. R., 403

——— art. 13—*Power-of-attorney*

STAMP ACT (XVIII OF 1869)—*concluded.*

——— art. 15—*Schedule appended to deed of sale—Collateral instrument.*—A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869. ANONYMOUS . . . 6 Mad., Ap, 36

1. ——— art. 32—*Power-of-attorney* —An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work is not an assignment of money, but a power-of-attorney, and is covered by a stamp of R8, whatever may be the amount recoverable under it. BHAGVANDAS KISHORDAS *v.* ABDUL HUSEIN MAHOMED ALI [I. L. R., 3 Bom., 49

2. ——— *Vakalatnama.*—A vakalatnama authorizing a pleader to receive, during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in consequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII of 1869. ANONYMOUS . I. L. R., 3 Calc., 787

S. C. IN THE MATTER OF ACT XXIII OF 1869 [3 C. L. R., 13

——— art. 38—*Instrument of transfer.*—The accused was prosecuted under Act XVIII of 1869, s. 29, for executing a document on insufficiently stamped paper. The document recited that, "whereas *A* and *B* have sold to me 2 gundas 3 cowries of land under a kobala, dated the 9th of Jeyt 1283, in lieu of a consideration of R695, and

dors and me, the purchaser, hence I have executed this chitti by way of conveyance or deed of exchange which may be of service when required." This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration. *Held* that the document was an instrument of transfer within the meaning of art. 83, sch. II, Act XVIII of 1869. EMPRESS *v.* DWARKANATH CHOWDHRY. I. L. R., 2 Calc., 399

STAMP ACT (I OF 1879)

——— s. 2, cl. 13—*Specified property.*—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement. *Held* that the fund intended to be created under the agreement was not "specified property" within the meaning of s. 2, cl. 13, of the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46 . . . I. L. R., 11 Mad., 216

——— s. 3.

See PROMISSORY NOTES, FORM OF. [I. L. R., 16 Mad., 283

STAMP ACT (I OF 1879)—*continued*

SUBAL BOWRI [I. L. R., 8 Calc., 284 : 10 C. L. R., 219

2. ——— sub s. (4)—*Bond—Promissory note.*—Where an instrument bearing date the 24th September 1881, stamped with an adhesive stamp of 1 anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument, the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand,—*Held* that the instrument was a bond within the definition given in Act I of 1879, and should be stamped accordingly. BALKRISHNA TRIMBAK *v.* GOVIND PAND NAIK . . I. L. R., 8 Bom., 287

3. ——— *Agreement—Bond—Loan of grain in consideration of repaying a larger measure of grain.*—An attested instrument, in which

ascertained to be less than R10, it was held to be properly stamped as a bond with a stamp of 2 annas. MAGANDAS KHEMCHAND *v.* RAMCHANDRA HIRAJI [I. L. R., 7 Bom., 137

4. ——— *Bond.*—*A* executed a document, by which he promised to pay on demand R16 to *B*. The writer of the document signed the document as writer, for the purpose of attesting *A*'s signature. *Held* that the document was liable to stamp duty as a bond. REFERENCE UNDER STAMP ACT, s. 46 . . I. L. R., 10 Mad., 158

5. ——— *Bond—Contract for personal service.*—The defendant signed an agreement in England with a Railway Company whereby he contracted to serve the Company exclusively for four years in India under a penalty of £100. The

6. ——— *Bond.*—*R* executed a document, by which he promised to pay on demand R10-12-0 with interest to *S R*. The writer of the document and some others signed the document as witnesses. *Held* that the document was a bond and liable to stamp duty as such. REFERENCE UNDER STAMP ACT, s. 49 . I. L. R., 13 Mad., 147

STAMP ACT (I OF 1879)—*continued.*

7. ——————— *Khata in the name of the debtor, but in the handwriting of another—Bond—Acknowledgment.*—A khata in the name of a debtor acknowledging the receipt of the amount advanced, and bearing the signature of the writer of the khata as writer of it merely, *held* to be an acknowledgment only, and not a bond, within the meaning of s. 3, sub s. 4 (*b*), of the Stamp Act (I of 1879). DULABH VANMALI *v.* REHMAN JAMAL

[I. L. R., 14 Bom., 511

8. ——————— and s. 61—*Acknowledgment of debt in writing—Attestation by witnesses—Bond.*—Documents which are in form acknowledgments only are not converted into bonds, as defined in s. 3, sub-s. 4 (*b*), of the Stamp Act (I of

itself creates an obligation to pay the money. HIRA LAL SIRCAR *v.* QUEEN-EMPRESS

[I. L. R., 22 Calc., 757

9. ——————— *Bond—Promissory note—Attestation by witness.*—A document by which the executant promised to pay to the person named therein a certain sum of money on a certain date with interest is not "attested by a witness" within the meaning of cl. (*b*) of sub-s. 4 of s. 3 of Act I of 1879, merely by reason of its bearing on the face of it a statement by the scribe of the document, that the document was correct and was written by his pen. REFERENCE UNDER STAMP ACT, s. 49

[I. L. R., 17 All., 211

10. ——————— and sch. I, art. 5—*Court Fees Act, sch. II, art. 1 (b)—Petition to withdraw suit—Agreement—Bond.*—A petition, stamped as an agreement, having been presented to a District Court by the parties to a suit, informing

11. ——————— and sch. I, art. 11—*Promissory note—Bond—Impressed label—Impressed sheet—Rule 9 (a) of the Rules of Government of India of 26th February 1881.*—By a docu-

document was a bond and must be treated as unstamped for the purposes of s. 34 of the Stamp Act, 1879. By a document, dated 23rd June 1880, stamped with an adhesive stamp of 1 anna, purporting to be a promissory note attested by two witnesses, *A*

promised to pay R56 to *B* or order, on demand. *Held* that the document was not a bond, but a promissory note. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 87

12. ——————— and sub-s. (13)—*Bond—Mortgage—Stamp Act, 1879, ss. 7, 25, and sch. I, arts. 13, 41.*—A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest money" and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar) upon which he was to receive a profit of

R1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits." As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held* by the Full Bench that the

must be taken into account. *Reference by Board of*

amount borrowed, plus R11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per

R25, the amount borrowed, plus R21, the sum recoverable at R1 per maund, in the event of the borrower's non-delivery of the 21 maunds; and stamp-duty was payable on this amount. IN THE MATTER OF GAJRAJ SINGH

[I. L. R., 9 All., 585

13. ——————— and s. 23—*Bond—Interest.*—A bond for a loan of R100 stipulated that the obligor should "pay twice the amount, including R100 for interest, total R200, in eight years from 1301 to 1308, according to kists given in the schedule." *Held* that the amount secured by the

STAMP ACT (I OF 1879)—*continued.*

bond was R200, and the bond must be stamped accordingly. S 23 of the Stamp Act (I of 1879) did not apply to the instrument. SAMBHU CHANDRA BEPARI *v.* KRISHNA CHARAN BEPARI

[I. L. R , 26 Calc., 179

14. ——————— and sch I, art. 13 —*Bond—Attestation.*—A company agreed to pay £220,000 in five instalments for the cost of constructing a railway, on the terms, among others, that debentures on the railway should be handed over to the company on each payment being made, and that, in the event of the other party failing to perform his liabilities as to the construction of the railway, the company should be entitled to sell the debentures,

[illegible]

1879. REFERENCE UNDER STAMP ACT, S 46

[I. L. R., 15 Mad., 193

——— s. 3, sub-s. (6)—*Order for payment of money on a person not a banker.*—The plaintiff agreed to lend money to the defendant for payment of his trade debts, etc In pursuance of the

[illegible]

v. VRIJBHUKHAN PARABHUDAM

[I. L. R., 17 Bom., 684

1. ——— s. 3, sub-s. (9)—*Conveyance*—

[illegible]

the will,—*Held* that the deed, having been drawn in the form of a conveyance, was liable to stamp duty as such. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 350

2. ——————— and sub ss (11) and (19)—*Deed of family arrangement.*—By a deed of family arrangement, one brother conveyed a pergunnah and the sum of two-and-a-half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims. *Held* that the deed was neither a conveyance or a settlement, nor an instrument of partition, within the meaning of Act I of 1879 IN THE MATTER OF THE MAHARAJAH OF DURBHUNGAH

[I. L. R., 7 Calc , 21

3. ——————— *Conveyance—Transfer of land in pursuance of compromise.*—A transfer of land, in pursuance of a compromise of a widow's suit for maintenance, is a conveyance, and must be stamped accordingly. REFERENCE UNDER STAMP ACT, s. 46 . . . I. L. R., 21 Mad., 422

1. —— —— s. 3, sub-s. (10)—*Unduly stamped —Rule 5 (e) of the Government of India, 3rd March 1882 (attestations of plain sheets subjoined to stamped documents)* [illegible]

[illegible]

dissenting), that the rule is *ultra vires* and inoperative for the purpose of declaring an instrument, written contrary to the provisions thereof, unduly stamped within the meaning of s. 3 (10) of the Act. *Per* TURNER, *C J.*—An instrument not written in accordance with the directions in rule 5 (*e*) is not duly stamped REFERENCE UNDER STAMP ACT, 1879 . . . . I. L. R., 8 Mad , 532

2 — — — *Duly stamped—Document issued without endorsement required by rules passed and published under ss. 55 and 57.*—The omission of a stamp vendor to endorse on a stamped paper the particulars required by rule (9) of the revised rules published under ss. 55 and 57 of the Indian Stamp Act, 1879, by the Government of [illegible] rnor-General [illegible] it "not duly [illegible] (10) of the [illegible] STAMP ACT, s. 46 . . . I. L. R., 11 Mad., 377

3. —— — —— *Instrument professing to effect a partition ultra vires of the executants—Instrument of partition* —Persons incorrectly pur-

[illegible]

4. — — —— *Instruments "duly stamped"—Rule 5 (b) of the rules made by the Governor-General in Council under Notification No. 1288 of 3rd March 1882*—The absence of the certificate required by rule 5 (*b*) of the rules, dated 3rd March 1882, issued by the Governor-General in Council, under ss 9, 15, 17, 32, 51, and

[illegible]

5. — - — —— *Promissory note not chargeable with duty of 6, 10, or 12 annas—Such promissory note written on impressed sheet of proper value bearing the word "hundi"—Note duly stamped—Rules by Governor-General in*

STAMP ACT (I OF 1879)—*continued.*

Council under s. 9 of Stamp Act—Notification No. 1288 of 3rd March 1882, rules 3, 4, 6—Notification No. 2955 of 1st December 1882, rule 6A.—The effect of Notification No. 2955 of the 1st December 1882, amending the rules made by the [illegible]

says that certain promissory notes shall be written on impressed sheets bearing the word "hundi" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "hundi" A promissory note for an amount not exceeding R200, payable otherwise than on demand, but not more than one year after date, and requiring a stamp of two annas, is duly stamped if written on an impressed sheet of the value of two annas, though that impressed sheet bears the word "hundi." RADHA BAI *v.* NATHU RAM . . I. L. R., 13 All., 66

6. ——— ——— and s. 34—*Rules 4 and 6 of rules made under s. 9 of the Stamp Act—Promissory note—Hundi stamp.*—In a suit on a promissory note for R4,300, which was executed on an impressed sheet bearing an impressed stamp with the word "hundi" at the top and the words "three rupees" at the bottom of the impression,—*Held* that, with reference to rules 4 and 6 of the rules made under s. 9 of the Stamp Act and dated 3rd March 1882 and the 1st December 1882, the instrument was "duly stamped" as to the amount of duty, and was admissible in evidence. BANK OF MADRAS *v.* SUBBARAYALU

[I. L. R., 14 Mad., 32

1. ——— — s. 3, sub-s. (11)—*Partition deed—List of divided property—Agreement to divide outstandings.*—In a document signed by the members of a Hindu family and attested by witnesses, which purported to be an account or list of the share of one member of the family in the family property, it was recited that the parents of the family were to enjoy certain lands, and that the outstanding debts should be divided at a future date. *Held* that this document was not liable to stamp duty as a partition deed. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 385

2. ——————— *Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award, Effect of—Division of the property in severalty—Partition deed.*—The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators,—*Held* that the instrument was an [illegible]

[I. L. R., 15 Bom., 677

3. ——————— and s. 29, and sch. I, art. 37—*Instrument of partition—Computation of value of property.*—*Held* that the words "the [illegible]

various allotments of land. Also, that the stamp duty chargeable under that Act on an instrument of [illegible]

the Court Fees Act, 1870. REFERENCE BY BOARD OF REVENUE . . . I. L. R., 2 All., 664

4. ——————— and s. 29 (e)—*In-* [illegible]

acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim on property of the family,—*Held* that the documents should be stamped as instruments of partition, each member paying according to the share taken by him under the partition REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 164

1. — s. 3, sub-s. (13)—*Definition of "mortgage"—Transfer of Property Act (IV of 1882).*—For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act, not as defined in the Transfer of Property Act. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER

[I. L. R., 27 Calc., 587
4 C. W. N., 524

2. ——————— *Mortgage—Indemnity* [illegible]

agreement was a mortgage as defined by the Stamp Act REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 11 Mad., 39

3. ——— — — *Lease—Mortgage.*—An instrument, therein described as a lease, was executed in consideration of one hundred and twenty [illegible]

STAMP ACT (I OF 1879)—*continued.*

1. ——— s. 3, sub-s. (15)—*Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document.*—A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and lastly, expressly guaranteeing payment of losses and claims settled under it, and which, on the face of it, does not contemplate the necessity of any other document of a more formal character

2 ——— and s. 25—*Policy of insurance—Uncovenanted Service Family Pension Fund, Stamp on entrance certificate of.*—An entrance certificate granted under the rules of the Uncove-

——— s. 3, sub-s. (17)—*Receipt—Memorandum of payment—Document containing no*

that money was received. IN RE JAMNADAS HARINARAN I. L. R., 23 Bom., 54

1 ——— s. 3, sub-s. 19 (b)—*Settlement—Gift.*—The word "settlement," as defined in s. 3 of the Stamp Act, suggests the creation of a separate interest in favour of several persons who may have a legal or moral claim on the settlor or for whom he may desire to make a provision *Held* therefore that where, because of natural affection, a person bestowed upon his sister and her son certain land, the document was liable to stamp duty as a gift and not as a settlement REFERENCE UNDER STAMP ACT, 1879 I. L. R., 7 Mad., 349

2. ——— *Settlement—Gift*—An instrument whereby a life-interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 21 Mad., 422

STAMP ACT (I OF 1879)—*continued.*

——— s. 5.

See POWER OF-ATTORNEY.

[I. L. R., 23 Calc., 187

——— s. 6—*Endorsement of consent of relative and co-sharer on deed of conveyance—Document completing transaction*—The document marked A was a document on a three-rupee stamp paper executed by *H* to one *V* purporting to convey to him certain immoveable property absolutely for the consideration of R275 On the same deed of sale *R*, the undivided nephew of the executant, endorsed his consent to the sale. *Held* that the endorsement of consent and the conveyance were several instru-

1. ——— s. 7, and s. 3, sub-s. (4), sch. I, art. 5—*Bond—Agreement with penalty in case of breach.*—One of the clauses of an instrument by which one party to the instrument bound himself, in the event of a breach on his part of any of the conditions of the instrument, to pay the other party thereto a penalty of R5,000, being regarded as a

senting) that the instrument was chargeable, under s 7 of that Act, with the stamp duty leviable on a bond for R5,000 *Per* STUART, *C.J.*—That, for the purposes of that Act, the penal clause in the instrument should not be regarded separately as a bond, but simply as one of the several clauses making up the entire agreement, and the instrument was only chargeable with a stamp duty of 8 annas REFERENCE BY BOARD OF REVENUE

[I. L. R., 2 All., 654

2 ——— *Contracts for several loans of rice on a single bond—Construction.*—Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt, showing how much rice had been borrowed by each

3. ——— para. 2—*Stamp duty—Lease—Pottah—Mortgage.*—By an instrument

deducted in payment of *A's* debt to *B*, so that in this way the whole debt should be paid by a series of instalments extending over the term of the lease. The instrument also contained the usual clauses found

STAMP ACT (I OF 1879)—*continued.*

——— s. 16 and ss. 11 and 34—*Hundi*— [illegible]

[illegible] son who received it from him and at the time of receiving it cancelled the stamp by writing the date across it,—*Held* that the hundi was duly stamped under ss. 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence. If at the time of delivery, which completed its legal character, the hundi was stamped, and if the cancellation took place at that time as part of the same transaction, it was sufficient. A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or [illegible]

1. ——— s. 24—*Conveyance—Consideration—Agreement to pay assessment until transfer is made in Collector's books—Relinquishment of title by mortgagor in favour of mortgagee.*—Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee and also agreed to pay the Government assessment until the transfer of the land to the name of the [illegible]

[illegible] was an agreement to pay assessment until the land conveyed was transferred in the Collector's books, and as such should bear the additional stamp for an agreement, namely, eight annas. SINAPAYA *v.* SHIVAPA

[I. L. R., 15 Bom., 675

2. ——— and sch. I, art. 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed, not by s. 24, but by [illegible] that Act. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 5 Mad., 18

3. ———*Stamp on sale certificate—Property sold subject to a mortgage—Interest—Transfer of Property Act (IV of 1882), sub-s 5 (d), s. 55.*—Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration-money for the purchase. The stamp duty payable on a document

STAMP ACT (I OF 1879)—*continued.*

conveying such a property is an *ad valorem* duty on the amount of the money paid as consideration for the sale. IN THE MATTER OF ACT I OF 1879. IN THE MATTER OF A REFERENCE TO THE BOARD OF REVENUE. I. L. R., 10 Calc., 92: 13 C. L. R., 164

4. ——— *Certificate of sale—Purchase-money.*—Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale. Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money. It is the duty of the purchaser to provide the stamp. IN RE RAMKRISHNA

[I. L. R., 9 Bom., 47

5. ——— and sch I, arts. 16 and 21—*Certificate of sale of property sold by public auction under order of Court—Sale subject to mortgage or lien—Mortgage-debt—Interest—Consideration.*—Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that [illegible]

[illegible] consideration in respect of which such sale is, under arts. 16 and 21 of sch I of that Act, liable to stamp duty is the sum of the purchase-money and the principal money so due on the mortgage. The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage. *Semble*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing [illegible]

6. ——— *Mortgage lien—Certificate of sale—Sale in execution of decree.*—Where property is sold at a Court-sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved. *Nagindas Jeychand v Halalkh re Nathwa Gheesla, I. L. R., 5 Bom., 470,* followed. KAISUR KHAN MURAD KHAN *v.* EBRAHIM KHAN MUSA KHAN

[I. L. R., 15 Bom., 532

STAMP ACT (I OF 1879)—*continued.*

26th May 1862 in Australia and was received in Madras on 22nd June 1862 when the Stamp Act (X of 1862) was in force, which contained no provision for stamping such a document executed out of British India. It was sought in 1890 to use the document in Madras, but it was not stamped. *Held*, that no penalty could be levied upon it under the Stamp Act of 1879. REFERENCE UNDER STAMP ACT, s. 46. [I. L. R., 14 Mad., 255

9. ———— and ss. 35 and 39—*Admission of unstamped document in evidence on payment of penalty—Necessity for production of original document.*—Where a Court has occasion to admit a previously unstamped document in evidence upon payment of a penalty under s 34 and the following sections of Act I of 1879, it is necessary that the original instrument should be before the Court. KALLU *v.* HALKI . I. L. R., 18 All., 295

10. ———— *Penalty chargeable only on the original, unstamped, or insufficiently stamped instrument—Document tendered as secondary evidence not within the section and not admissible.*—By the terms of the Indian Stamp Act, 1879, the provisions of s. 34, which apply to documents either unstamped or insufficiently stamped, have no application when the original instrument, which ought to have been properly stamped, but was not, has not been produced. The clauses of that section deal with, and exclusively refer to, the admission in evidence of original documents which have been either not stamped at all or have been insufficiently stamped. RAJA OF BOBBILI VENKATA SVETA *v.* INUGANTI CHINA [I. L. R., 23 Mad., 49
L. R., 26 I. A., 262

VENKATA SVETA CHALAPATI *v.* INUGANTI BHAVAYYAMANI GARU . . . 4 C. W. N., 117

11. ———— *Notice of allotment of shares not stamped—Evidence of notice of allotment.*—A notice of allotment of shares in a Company, though not stamped, is admissible in evidence to establish the fact that notice of allotment had been given. *In re Whitly Stile's Case, 49 L. J. Ch., 176*, and *Surju Narain Mukhopadhya v. Protap Narain Mukhopadhya, I. L. R., 26 Calc., 955, p. 959*, followed. *Per* STANLEY, J., in Original Court and MACLEAN, *C.J.*, and MACPHERSON and HILL, *JJ.*, on appeal. MOHUN LALL *v.* SRI GUNGAJI COTTON MILLS CO. . . . . 4 C. W. N., 389

12. ———— *Admission of document in evidence—Unstamped promissory note admitted as a bond on a payment of stamp duty and penalty—Subsequent rejection too late.*—The plaintiff sued to recover the amount due on three khatas. The defendant objected that the khatas were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same [illegible]

STAMP ACT (I OF 1879)—*continued.*

in evidence under s. 34, proviso I. He accordingly dismissed the suit. On appeal, the District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes, but held that, after they had once been admitted in evidence on payment of the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit under proviso III to s. 34 of the Stamp Act. He therefore reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand, defendants appealed to the High Court. *Held* that the promissory notes, having been once admitted in evidence, could not afterwards be rejected on the ground of their not being duly stamped. DEVACHAND *v.* HIRACHAND KAMARAJI [I. L. R., 13 Bom., 449

13. ———— *Inadmissibility of stamped document stamped after execution—Document not duly stamped.*—A receipt (dated 1857) stamped subsequently to execution, but before production in Court, was tendered in evidence. *Held* that the document was inadmissible. S. 34 of Act I of 1879 requires instruments chargeable with duty to be [illegible] I. L. R., 13 Bom., [illegible]

14. ———— *Instrument admitted as duly stamped—Appellate Court's power to question the admission—Bom. Reg. XVIII of 1827, s. 10.*—Where a Court of first instance has admitted a document in evidence as duly stamped, s. 34, cl. 3, of the Stamp Act (I of 1879) precludes the Appellate Court from question- [illegible] requiring a stamp thereunder was valid unless duly stamped. GURUPADAPA BIN IRAPA *v.* NARO VITHAL KULKARNI . I. L. R., 13 Bom., 493

15. ———— *Document proposing to borrow on certain conditions—Promissory note—Proposal—Contract Act (IX of 1872), s. 4.*—A letter containing a request to borrow a certain sum of money promising that the same should be repaid with interest on a certain day is not liable to stamp duty. It is not a promissory note, but a mere proposal under s. 4 of the Contract Act (IX of 1872). DHONDBAT NARHARBHAT *v.* ATMARAM MORESHVAR [I. L. R., 13 Bom., 669

16. ———— *"Chargeable with duty"—Promissory note executed out of British India—Insufficient stamp—Stamp Act, ss. 5 and 18.*—A suit upon a promissory note which had been executed out of British India was dismissed on the ground that the note was insufficiently stamped, and that it could not be admitted in evidence, on payment of the duty chargeable, under s. 34 of the Indian

STAMP ACT (I OF 1879)—*continued.*

a promissory note executed out of British India to be stamped before it is sued on or used in Court, where the holder of the note has not done any of the acts referred to in ss 5 and 18 of the Act, and, in consequence, the obligation to stamp has not arisen. MAHOMED ROWTHAN *v.* MAHOMED HUSIN ROWTHAN [I. L. R., 22 Mad., 337

1. ——— s. 37 and s. 40—*Arbitration—Award—Evading payment of stamp duty.*—Six persons acted as arbitrators in a dispute between two of their fellow villagers, and delivered their

can be instituted under s 43, the Collector is bound to form an opinion as to whether the offence was committed with the intention of evading payment of the proper duty. EMPRESS *v* SODDANUND MAHANTY

[I. L. R , 8 Calc., 859: 10 C. L. R., 365

2. ——— ——— *Duty and penalty on*

s 37 (*b*) of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879 I. L. R , 5 Mad., 394

3. ——— and ss. 33, 34, 35, 45, and 50—*Collector's decision that an instrument is chargeable with duty—Duty of Civil Court—*

If his decision under that clause is not obeyed, and the duty and penalty are not paid, any Civil Court before which the document may come has the duty cast upon it under s 33 of examining it and of determining for itself whether it is duly stamped or not, and, if not, of taking the steps laid down in ss. 33, 34, and 35, that decision being subject to revision under s 50. HARIBAI *v.* KRISHNARAV GOPAL [I. L. R., 22 Bom , 632

1. ——— s. 39—*Deed of release—Endorsement on conveyance—Payment of deficient duty.*—

STAMP ACT (I OF 1879)—*continued.*

A deed of release was endorsed on a deed of conveyance for R100. The conveyance bore an impressed stamp for one rupee, but the endorsement was unstamped. *Held* that the conveyance was valid, and that the release could be validated on payment of the deficient stamp duty and the penalty under s 39 of the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46 . . . I. L. R , 11 Mad., 40

2. ——— *Lost document which is unstamped—Payment of penalty—Secondary evidence of lost document.*—In the case of a lost document no penalty can be levied and secondary evidence admitted, for s. 39 of the Stamp Act pre-

——— s. 41—*Fresh suit—Costs—Civil Procedure Code, 1882, ss. 13, 43*—The plaintiff in a suit upon a certain instrument not duly stamped was compelled to pay the amount of duty and penalty. The defendant was the person bound to bear the expense of providing the proper stamp for such instrument. The plaintiff, with reference to s. 41 of the Stamp Act, 1879, sued the defendant to recover such amount. *Held* that such amount could not be regarded as part of the costs in the suit in which it was paid, and a separate suit to recover it was maintainable. ISHAR DAS *v.* MASUD KHAN [I. L R., 6 All., 70

——— s. 49—*Power of reference to High Court.*—A bail-bond was executed to a District Munsif, who expressed no doubt as to the amount of

1. ——— s 50—*Power of Appellate Court as to insufficiently-stamped documents admitted in lower Court.*—Where a document has been admitted

2 ——— and s. 3, cl. 1—*Unstamped document admitted by original Court on payment of duty and penalty—Power of Appellate Court to review such admission.*—Where the Court of first instance has, on payment of the prescribed duty and penalty, admitted an unstamped document as evidence, under s 3, proviso 1, of Act I of 1879, a superior Court sitting in appeal has no jurisdiction to review the lower Court's proceedings, in so far as they concern such admission, except in the case provided for by s 50 of that Act PUNCHANUND DASS CHOWDHRY *v.* TARAMONI CHOWDRAIN

[I. L. R., 12 Calc., 64

3. ——— *Collector, Power of—Reference to High Court—Decision of Provincial Small Cause Court admitting insufficiently stamped document in evidence.*—*Semble*—A Collector is entitled

STAMP ACT (I OF 1879)—*continued.*

under s 50 of the Stamp Act to refer to the High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty. REFERENCE UNDER STAMP ACT, s. 50

[I. L. R., 15 Mad., 259

1. ———— s. 51—*Application for allowance for spoiled stamps—Power of Collector as to inquiry—Transfer of duty to Deputy Collector—Charge of false evidence—Penal Code, ss. 181, 193.* —S. 51, Ch. VI of Act I of 1879, enacts that, "subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, etc." According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Ch. VI of the said Act, or his duly authorized agent, to make an oral deposition on oath, etc" *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law [illegible]

made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s 181 or s. 193 of the Penal Code was sustainable EMPRESS *v.* NIAZ ALI . . I. L. R., 5 All., 17

2. ———— *Mortgage-deed stamped, but not used*—A mortgage-deed, which provided for the transfer of possession of the mortgaged premises, was executed to secure the repayment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped, but not registered, and on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the transaction, and the executants executed a deed of conditional [illegible]

[I. L. R., 16 Mad., 459

3 ———— *Allowance for spoiled stamps—Mistake made when using stamped paper.*—S. 51 (a) of the Stamp Act, which permits an allowance being made for spoiled stamps, applies only to cases of [illegible]

[I. L. R, 18 Mad., 122

4. ———— *Spoiled stamp—Accidental injury to stamp.*—The purchaser at a Court-sale presented a stamped paper for the engrossment of the sale-certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty. *Held* that the document was duly stamped, and that the amount levied should be refunded. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 18 Mad., 235

5. ———— and ss. 3, 31—*Allowance for spoiled stamps.*—Allowance for spoiled stamps may be made under s. 51 of the Stamp Act when a stamped instrument has been endorsed by the Collector under s. 31. REFERENCE UNDER STAMP ACT, s 46 . . . . I. L. R., 11 Mad., 37

———— s. 61.

See ABETMENT . I. L. R., 8 All., 18

1 ———— and ss. 3 (10) and 57—*Rules of Governor-General, 3rd March 1882, 5 (e)—Construction—Stamped paper—Writing on reverse side, Effect of.*—In exercise of the powers con[illegible]

tested by the signatures or marks of all the persons executing the document and the witnesses to the same." *Held* that this rule was an enabling rule, and did not make it obligatory on parties not to write on the reverse side of an impressed stamp paper, so as to make it an offence under s 61 if they did so write. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 176

2. ———— — *Promissory note—Insufficient stamp—"Accepting."*—The term "accepting" used in s. 61 of the Stamp Act, 1879, does not mean "receiving," but "executing as acceptor" To receive a promissory note not duly stamped and put it in suit does not constitute an offence under s 61 of the Stamp Act, 1879 QUEEN *v.* GULAM HUSSAIN

[I. L. R., 7 Mad., 71

3. ———— and s. 64—*Receipt—Ac*[illegible]

[illegible] I. L. R., 6 Mad. [illegible]

4 ———— *Person receiving an under-stamped promissory note—Person executing note.*—Under s. 61 of Act I of 1879, the "person accepting" a promissory note not duly stamped is the

STAMP ACT (I OF 1879)—*continued.*

person who executes such note as acceptor, not a person who merely receives the note. The mere receiver of an unstamped or insufficiently stamped promissory note is not as such liable to any penalty under this section either as principal or abettor. *Queen* v. *Gulam Husain, I. L. R., 7 Mad., 71,*

5. ——————— *Memorandum of payment —Document containing an acknowledgment of* ...

He was charged and convicted, under s. 61 of the Indian Stamp Act (I of 1879), for not affixing a receipt stamp to the memorandum. *Held* (reversing the conviction) that the memorandum was not a receipt. To constitute a receipt within the meaning of s. 3 (17) of the Stamp Act, there must be an acknowledgment, either express or implied, of the receipt, and not a mere statement that money was received. IN RE JAMNADAS HARINARAN

[I. L. R., 23 Bom., 54

6. ——————— and ss. 37 and 40—*Offence against stamp law—Sanction to prosecute—Intention to defraud* ...

7. ——————— and ss. 37, 40, and 69—*Offence under Stamp Act—Execution of unstamped document—Sanction by Collector to prosecute—Procedure—Abetment.*—*A* executed to *B* on plain paper an instrument which should have been ...

prosecution resulted in the conviction of *A* under s. 61 of the Stamp Act (I of 1879) and of *B* of abetment of *A's* offence. *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. *Held* further that mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument. EMPRESS v. JANKI . . . I. L. R., 7 Bom., 82

8. ——————— *Offence under Stamp Act—Omission of treasury officer to give certificate required by rule 5 (b) of the rules made by the Governor-General in Council under Notification*

STAMP ACT (I OF 1879)—*continued*

1288 of 3rd March 1882.—The non-compliance by the treasury officer or the stamp vendor with the direction to give the certificate required by rule 5 (*b*) of the rules dated 3rd March 1882 issued by the Governor-General in Council under ss. 9, 15, 17, 32, 51, and 56 of the Stamp Act is not an act for which the person purchasing the stamp from him can be punished, by the invalidation of the stamp innocently bought by him or under s. 61 of the Stamp Act. QUEEN-EMPRESS v. TRAILAKYA NATH BARAL I. L. R., 18 Calc., 39

9. ——————— and sch. II, arts. 52 and 58—*Acknowledgment of receipt of cheque by letter not stamped.*—*M* acknowledged receipt of a cheque for R100 by letter. The letter was not stamped. *Held* that *M* was properly convicted under s. 61 of the Stamp Act, 1879. QUEEN-EMPRESS v. MUTTIRULANDI I. L. R., 11 Mad., 329

10. ——————— and ss. 64 and 58—*"Signing otherwise than as a witness, etc.," Meaning of—Liability of agent authorized to sign on behalf of principal—Granting of unstamped receipt—Refusal to grant stamped receipt by firm—Liability of members of such firm—"Person," Meaning of—Proof of demand of receipt.*—The expression "signing otherwise than as a witness, etc.," as used in s. 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section. Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were written at the dictation of the manager of the firm was held not to be sufficient to distinguish his case from that of any other agent. The term "person" in ss. 61 and 64 of the Stamp Act includes the members of a trading partnership. So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of money from one *L* and had refused to grant him a stamped receipt), were charged under s. 61 of the Stamp Act with having granted an unstamped receipt, and under s. 64 of that Act with having refused to grant a duly stamped receipt, it was held that their liability depended on whether they were in contemplation of law the persons who signed the letters of acknowledgment or refusal to give the receipt, and not on whether they were present at the writing of the letters, or knew of the writing of them, provided that it was established by evidence that a requisition for a receipt had been made under s. 58 of that Act. QUEEN-EMPRESS v. KHETTER MOHUN CHOWDHRY

[I. L. R., 27 Calc., 324
4 C. W. N., 440

——————— s. 63 and ss. 37 (b), 40, 61—*Prosecution for attempt to defraud Government by under stating the value of property in a partition-deed.*—

STAMP ACT (I OF 1879)—*continued.*

A District Judge impounded a partition-deed produced before him and forwarded it to the Collector under s 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63 The Collector under s. 69 sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s 63 of the Act. On appeal, the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (*b*) or s. 40 of the Act. *Held* that the acquittal was wrong. *Empress* v *Dwarkanath Chowdhry, I L. R., 2 Calc. 399, Empress* v. *Soddanund Mahanty, I. L. R., 8 Calc., 259; Empress* v *Janki, I. L. R., 7 Bom., 82,* considered. QUEEN-EMPRESS *v.* VENKATRAYADU

[I. L. R., 12 Mad., 231

——— s. 64 and s. 69—*Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, Want of.*—Prosecution for an offence committed in contravention of s 64 of the Stamp Act (I of 1869) cannot be instituted unless with the previous sanction of the Collector under s. 69 of the same Act. QUEEN-EMPRESS *v.* JETHMAL

[I. L. R., 9 Bom., 27

1. ——— s. 67—*Document executed with intent to defraud revenue*—The second clause of [illegible]

2. ——— and s. 61—*Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abetment of an offence under s. 61 of Stamp Act, 1879—Penal Code (Act XLV of 1860), s. 40.*—Two letters were [illegible]

document, if it were punishable at all, was provided for under s. 61 of the Stamp Act, 1879, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s. 61 of the Stamp Act, 1879, and to the definition of an "offence" in s 40 of the Penal Code, and, if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of s. 67 of the Stamp Act, 1879. QUEEN-EMPRESS *v.* SOMASUNDARAM CHETTI

[I. L. R., 23 Mad., 155

——— s. 68—*Court-fee stamps—Sale by un-* [illegible]

——— s. 69.

See COLLECTOR . I. L. R., 2 All., 806

See COURT FEES ACT, 1870, SCH. I, ART. 8.
[I. L. R., 11 Bom., 520

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.
[I. L. R., 18 Bom., 614
I. L. R., 21 Bom., 201

See LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF DEBTS.
[I. L. R., 18 Bom., 614
I. L. R., 21 Bom., 201

——— sch. I, art. 1.

See CASES UNDER STAMP ACT, 1869, SCH. II, ART. 5.

1. ——— *Acknowledgment—Hath-chitta.*—Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), sch. I, art 1, is a question depending in each case upon the form and intention of the entry. BINJA RAM *v.* RAJMOHUN ROY . I L. R., 8 Calc., 282

2. ——— *Stamp duty—Hath-chitta—Evidence—Acknowledgment.*—An account [illegible]

dhram, I. L. R, 4 Calc., 865, followed. BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA

[I. L. R., 9 Calc, 127

3. ——— *Acknowledgment—Promise in writing—Contract—Contract Act (IX of 1872), s. 25, cl. 3, and s. 62, ill. (a).*—A khata, or account stated, bearing a stamp of one anna, but containing no promise [illegible]

4. ——— *Acknowledgment—Balance-sheet—Nikash.*—A nikash or balance-sheet made out and signed by a gomashta of a business showing a balance due by him to the owner of the business is not an acknowledgment of a debt within the meaning of art. 1, sch. I of the Stamp Act, and is admissible in evidence without being stamped. *Brojo*

STAMP ACT (I OF 1879)—*continued.*

Gobind Shaha v. Goluck Chunder Shaha, I. L. R., 9 Calc., 127, followed. NUND KUMAR SHAHA v. SHURNOMOYE DASI . . I. L. R., 15 Calc., 162

5. ———— *Acknowledgment of debt—Limitation Act (XV of 1877), s. 19—Intention.*—The question whether or not an allusion to a debt contained in a letter from a debtor to his creditor amounts to an acknowledgment of the debt within the meaning of art. 1, sch. I of the Stamp Act, 1879, is a question in each case of the intention of the writer. Hence, where such a letter, written *ante litem motam*, before limitation in respect of the debt had expired, and at a time when other evidence of the debt was

sible in evidence by reason of its not having been stamped. BISHAMBAR NATH v. NAND KISHORE [I. L. R., 15 All., 56

6. ———— and art. 5—*Acknowledgment—Admissibility in evidence.*—The defendant, in two letters to the plaintiff in respect of certain contracts to sell Government securities, acknowledged his inability to give delivery, and after calculating the amount of the differences between the contract prices and the market prices on the dates

that they were insufficiently stamped and inadmissible in evidence. MANICK CHUND v. JOMONA DOSS [7 C. L. R., 83

S. C. MANICK CHUND v. JOMOONA DOSS [I. L. R., 8 Calc., 645

1. ———— sch. I, art. 4—*Agreement to lease—Correspondence containing agreement to lease—Complete agreement.*—Certain correspondence passed between the plaintiff and defendant relating to the lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement for a lease for one year, with an option of renewal for another year. The terms in which the option was given were as follows The defendant in one letter wrote "so I expect you will give me the option of

shorter period" In pursuance of an arrangement,

eventually refused to execute it, and it was never signed by the defendant. The option of renewal was given in the unexecuted lease in the following terms: "Also with option to renew for another twelve months certain" The defendant having

STAMP ACT (I OF 1879)—*continued.*

before the suit came on to be heard, and the defendant, not having exercised the option to renew, vacated the premises. At the hearing the defendant, in

because it was unstamped, and on behalf of the defendant it was argued that the stamped unexecuted lease must be treated as part of the correspondence, and as it was properly stamped, no further stamp was necessary. *Held* that, as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that consequently the correspondence must be stamped and the penalty paid before it could be admitted in evidence. BOYD v. KREIG . I. L. R., 17 Calc., 548

2. ———— "*Agreement to lease.*" —An agreement by a zamindar to execute a formal

REFERENCE UNDER STAMP Act, s. 46 [I. L. R., 17 Mad., 280

1. ———— sch. I, art. 5—*Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence.*—Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped *Held* that the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement RAINIER v. GOULD . . . I. L. R., 13 Mad., 255

2. ———— *Agreement—Document acknowledging receipt of money for future sale of shares of a company and promising to execute a pukka document of sale.*—A document whereby the party executing it purported to sell his right, title, and interest in certain receipts for shares, and to execute in future a pukka document of sale thereof, and acknowledged the receipt of R10,001, *held* to be an agreement, and, as such, liable to stamp duty of eight annas under sch. I, art. 5, of the Stamp Act (I of 1879), the property in the receipt not being intended to pass forthwith. HEPTULA SHEIKH ADAM & CO. v. ESAFALI ABDULALI . . . I. L. R., 14 Bom., 316

3. ———— *Letters submitting to arbitration.*—Letters written by parties authorizing arbitrators to arbitrate between them do not require to be stamped as forming an "agreement" within the meaning of art. 5, sch. I of the Stamp Act.

STAMP ACT (I OF 1879)—*continued.*

GANGARAM KUSHABA RANGOLE *v.* NARAYAN BABAJI RANGOLE . . I. L. R., 19 Bom., 32

4. ——— and art. 28—*Indemnity note given to railway company by consignee—Agreement*—An indemnity note, passed to a railway company by a consignee and his surety in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt—by which note they undertake to hold the railway company, its agents, and servants, harmless and indemnified in respect of all claims to the said goods—is not an "indemnity bond" falling under art. 28, sch I of the Stamp Act (I of 1879), but is an agreement falling under cl (*c*), art 5, sch. I of that Act, and consequently chargeable only with a stamp duty of 8 annas ANONYMOUS

[I. L. R., 5 Bom., 478

5. ——— *Document—Agreement to pay.*—A document was executed in these terms "This document, a hand-note, is executed by me for the purpose of purchasing a ghor. I take from you R7. I will pay interest on the sum at a half-anna per rupee per mensem Having received the R7 in cash, this hand-note is executed" *Held* that the document was not a promissory note, nor a bond, but was an agreement to pay, and as such was chargeable with duty under cl 5, sch I of the Stamp Act. *Ferrier v. Ram Kulpa Ghose, 23 W. R., 403,* referred to. MUKARI MOHUN ROY *v.* KHETTER NATH MULLICK . I. L. R., 15 Calc., 150

6. ——— and art. 44 (a)—*Agreement—Mortgage.*—In a contract for work to be performed entered into by a contractor with the Executive Engineer of a district, it was stipulated that payments should be made from time to time to the contractor as the work progressed, and that the Engineer might retain 10 per cent. on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract. *Held* that this contract was chargeable with stamp duty as an agreement under art. 5 (*c*) and not as a mortgage under art. 44 (*a*) of sch I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 209

7. ——— and art. 44—*Mortgage—"Agreement not otherwise provided for."* A license issued to an arrack renter expressly required as one of its conditions that the licensee should deposit a sum equal to three months' rental as a security for the due performance of the contract. The licensee executed a muchalka, stating that he agreed to all the terms and conditions mentioned in the [illegible]

stam [illegible]

UND [illegible]

[I. L. R., 15 Mad., 134

8. ——— and sch. II, cl. 2 (a)—*Agreement to rent pasture ground—General Clauses Act (I of 1868), s. 2—Growing grass—Lease—Immoveable property.*—By a rent-note, dated the 28th July 1885, the executant *B* agreed to take for five months from the executee *H* a certain pasture ground attached to the military cantonment at Poona. The note recited that *B* was to graze thirteen she-buffaloes, at R1-10 per head, on the pasture ground, for a consideration of R21-2-0 to be paid to *B* by two instalments; in default of payment of one instalment, the whole amount was to become payable at once It further recited that, in case the debt remained unpaid beyond the fixed period, *B* was to pay on the amount interest at the rate of 2 per cent. per month The Collector of Poona was of opinion that the rent-note in question was a lease and sufficiently stamped with four annas. The Inspector-General of Registration held the document to be an agreement falling under art. 5, cl. (*c*), sch. I of the Stamp Act, and chargeable with a stamp duty of eight annas On reference by the Commissioner to the High Court,—*Held per* [illegible]

Stamp Act (I of 1879) *Held per* NANABHAI HARIDAS, *J.*, that the instrument was a lease and sufficiently stamped with four annas, growing grass being immoveable property within the definition of s. 2 of the General Clauses Act (I of 1868) Should, [illegible]

under sch. II, art. (*a*), of the Stamp Act. IN RE HORMASJI IRANI . . I. L. R., 13 Bom., 87

9 ——— and sch. II, art. 2—*Interest in land—Agreement to sell standing trees*—A document bearing a stamp of one rupee stated (*inter alia*), "I have sold to you the standing trees of the two villages for R1,601 on condition that those young trees whose trunks do not exceed 2 feet in circumference should not be cut by you, and that I will give you written information to cut the trees of the said villages when you shall have to cut the trees and remove them within two years, etc." *Held* that the document was sufficiently stamped. VOHRA MAHAMADALI *v.* RAMCHANDRA

[I. L. R., 22 Bom., 765

——— sch. I, art. 8—*Articles of Association—Special resolution—Resolution superseding Articles of Association—Companies Act (VI of 1882), ss. 76, 79.*—A company limited by [illegible]

Companies Act, 1882, sent to the Registrar of Joint [illegible]

Stamp Act, 1879, as to whether the document in-

STAMP ACT (I OF 1879)—*continued.*

question required to be stamped. *Held* that the Indian [illegible] thing a [illegible] documen[illegible] record [illegible] require to be stamped IN THE MATTER OF THE NEW EGERTON WOOLLEN MILLS

[I. L. R., 22 All., 131

1. ———— sch. I, art. 11—*Bill of exchange otherwise than on demand—Impressed stamp.*—A bill of exchange for R500 payable otherwise than on demand must, under art. 11 of sch. I of the Act, be stamped with an impressed stamp of the value of six annas RADHAKANT SHAHA *v.* ABHOYCHURN MITTER . . . I. L. R., 8 Calc., 721

S C RADHAKANT SHUBA *v* ABHOY CHURN MITTER . . . 11 C. L. R., 310

2.———— and art. 19 —*Cheque—Bill of exchange—Admissibility in evidence—Post-dated cheque—Stamp Act, 1879, s. 67—Penalty.*—In determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence, must be looked at *Bull* v. *O'Sullivan, L. R., 6 Q. B., 209, Gatty* v. *Fry, L. R., 2 Ex D., 265*, and *Chundra Kant Mookerjee* v. *Kartik Charan Chaile, 5 B L. R., 103*, referred to. Where a cheque bearing a stamp of one anna was dated the 25th September, and the evidence showed it to have been actually drawn on the 8th September, and therefore to have been post-dated, it was contended that the cheque was [illegible]

———— sch. I, art. 13—*Security-bond for costs of appeal—Court Fees Act (VII of 1870), sch. II, No 6.*—*Held* by the Full Bench that where a bond is given under the orders of a Court as security by one party for the costs of another, it is subject to two duties—(*a*) an *ad valorem* stamp under the Stamp Act, art. 13, sch. I, (*b*) a Court-fee of eight annas under the Court Fees Act, art 6, sch. II. KULWANTA *v* MAHABIR PRASAD

[I. L. R., 10 All., 16

1. ———— sch. I, art. 16—*Certificate of sale.*—The stamp duty payable on a certificate of sale is governed not by s 24, but by sch I, art 16, of the Stamp Act, 1879 REFERENCE FROM DISTRICT JUDGE UNDER S 49 OF STAMP ACT

[I. L. R., 5 Mad., 18

2. ———— *Certificate of sale—Purchase of equity of redemption—Duty.*—Where [illegible]

STAMP ACT (I OF 1879)—*continued.*

3. ———— *Certificate of sale—Practice—Ad valorem stamp duty—Sale, subject to mortgage lien, of property in several lots—Stamp duty payable by purchaser of one lot, how calculated.*—In execution of a decree, certain immoveable property was attached and sold in eight lots to different persons, subject to a mortgage. The applicant was one of the purchasers, and applied for a sale-certificate A question arose whether, in computing stamp duty, the whole amount of the principal mortgage-debt, or only a proportionate amount of it, was to be deemed a part of the consideration. On reference to the High Court,—*Held* that the whole amount of the principal mortgage-debt, and not merely a proportionate amount of it, was to be added to the price, and the total amount to form the consideration upon which an *ad valorem* stamp duty was to be calculated, each purchaser obtaining a separate sale-certificate. IN RE THE APPLICATION OF VISHNU KESHAV SATHE

[I. L. R., 10 Bom., 58

4. ———— *Sale-certificate - Sale subject to incumbrance.*—Where property subject to an incumbrance is sold by auction in execution of a decree, the sale-certificate should be stamped according to the amount of the purchase-money, and not according to the amount of the purchase-money together with the incumbrance JWALA PRASAD *v.* RAM NARAIN . I. L. R., 15 All., 107

5. ———— *Sale of property subject to mortgage—Valuation of property sold—Computation of purchase-money—Certificate of sale—Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code (1882), ss. 282 and 287.*—Mortgages noted in the proclamation of sale as claims upon the property sold should not be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared, under s. 282 of the Civil Procedure Code (Act XIV of 1882), to be [illegible]

or if they have been declared under s 282 of the Civil Procedure Code, and the sale has been held subject to them. Claims admitted by parties or established by the decree of a Court should be entered [illegible]

the Civil Procedure Code. SHANTAPPA CHEDAMBARAYA *v.* SUBRAO RAMCHANDRA YELLAPUR

[I. L. R., 18 Bom., 175

1. ———— sch. I, art. 21—*Conveyance by vendors under one denomination to the same persons purchasers under another denomination.*—Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company, the consideration expressed in the deed of conveyance being £43,320, payable in shares and debentures of the company taken at par The only shareholders

STAMP ACT (I OF 1879)—*continued.*

or debenture-holders of the company were the eight persons who purported to sell the estate to the company. *Held* that, although the conveying parties [illegible]

[I. L. R., 13 Calc., 43

2. ———— and art. 60, cl. (b)—*Transfer of lease—Transfer of a share of a partnership.*—Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the [illegible] that falling under sch. I, art. 21, of Act I of 1879. IN RE MENGLAS TEA ESTATE

[I. L. R., 12 Calc., 383

3. ———— *Company—Winding up—Transfer of property by old to new company—Conveyance.*—An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property [illegible]

[I. L. R., 20 Bom., 432

4. ———— *Conveyance—Transfer of lease.*—When by one and the same deed there is a conveyance of freehold lands and goodwill and a transfer of interest secured by leases, the deed should be stamped under art. 21 of sch. I of the Stamp Act (I of 1879) with an *ad valorem* duty on the conveyance of the freehold property, goodwill buildings, and erections, and under art. 60 of the schedule with a duty of R5 on the transfer of each of the interests secured by the leases. REFERENCE UNDER STAMP ACT, 1879, s 46

[I. L. R., 23 Calc., 283

5. ———— *Conveyance.*—The amount payable on a conveyance under the Stamp Act sch I, art. 21, is properly calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed. REFERENCE UNDER STAMP ACT, s. 45 I. L. R., 20 Mad., 27

1. ———— sch. I, art. 22—*Civil Procedure Code (Act XIV of 1882), s. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer*—Art. 22 of sch I of the General Stamp Act (I of 1879) does not apply to a copy [illegible] in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing. KRISHNAJI SADASHIV RANADE *v.* DULABA

[I. L. R., 15 Bom., 687

2. ———— [illegible] Act [illegible], for the purposes indicated therein. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 19 All., 293

———— sch. I, art. 25, and art. 5—*Declaration of trust—Agreement.*—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement. *Held* that the agreement was liable to stamp duty as a declaration of trust under the Indian Stamp Act, 1879, sch. I, art. 25, and as an agreement under art 5 (*c*). REFERENCE UNDER STAMP ACT, s. 46 . I. L. R., 11 Mad., 216

———— sch. I, art. 29—*Instrument evidencing an agreement to secure repayment of loan executed at time of loan—Assignment by way of mortgage of valuable security to secure pre-existing debt.*—Art. 29 of sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER I. L. R., 27 Calc, 587
[4 C. W. N., 524

1. ———— sch. I, art. 36—*Instrument of gift—Endorsement at foot of document.*—On the 3rd of April 1878, on which date the Stamp Act (XVIII of 1869) was in force, *A* passed to *B* a document on plain paper granting *B* an annuity charged on the revenues of a village On the 24th of April 1879, the Stamp Act (I of 1879) being then in force, *A* adopted *C* as her son, and *C* three days afterwards made the following endorsement upon the document: "I consent to act according to this sanad." *Held* that the instrument should be stamped with a single stamp as an instrument of gift, under art. 36, sch. I of Act I of 1879 IN RE BHAVANIBAI . . I. L. R., 7 Bom., 194

2. ———— and art. 25—*Declaration of trust—Gift.*—Where a donee was directed in an instrument of gift of certain land to maintain the donor out of the profits of the land,—*Held* that the instrument was liable to stamp duty as a gift, and not as a declaration of trust. REFERENCE UNDER STAMP ACT, s. 46 I. L. R., 12 Mad., 89

STAMP ACT (I OF 1879)—*continued.*

———— sch. I, art. 37—*Partition, Instrument of—Arbitration—Award.*—An award directing partition of property, if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition, and should be stamped accordingly. AMARSI *v.* DAYAL

[I. L. R., 9 Bom., 50

1. ———— sch. I, art. 38—*Deed acknowledging former adoption and investing the person adopted with powers of son.*—*A*, who was a childless Hindu widow, acknowledged the fact of the due adoption of *B* by a deed which recited that she having [illegible]

[illegible]

I of 1879, art 38, sch. I, and that it was not liable to any stamp duty. IN THE MATTER OF AMBAI

[I. L. R., 13 Bom., 280

2. ———— *Deed confirming adop-tion*— A document [illegible]

[illegible]

his father *P* endorsed separately their consent to the adoption. *Held* that the document was not an instrument conferring an authority to adopt, and therefore not chargeable under art 38 of sch. I of Act I of 1879 or under any other article The endorsements therefore were not chargeable with any stamp duty. IN THE MATTER OF HANMAPA

[I. L R., 13 Bom., 281

1.———— sch. I, art. 39 (b)—*Lease—Rent*—A mittadar executed a perpetual lease of certain villages for R1,954 per annum Of this, R1,554-10-7 representing the Government peshkash, the lessor directed the lessee to pay to Government and the balance R400 to himself The lease was written on a 20-rupee stamp paper. *Held* that the sum of R1,954 represented the rent and that the stamp duty was to be calculated thereupon REFERENCE FROM BOARD OF REVENUE

[I. L R, 7 Mad., 155

2 ———— sch I, art. 39 (c), (d)—*Rent—Premium—Mortgage—Lease* — By a document purport-

[illegible]

that the payment of R50 in advance was not payment of a premium or fine within the meaning of art 39 (c)

STAMP ACT (I OF 1879)—*continued.*

[illegible] ting to [illegible] for five [illegible] ent, dep[illegible] was to [illegible] the tern[illegible] with the lessor was not a fine or premium within the meaning of art. 39 (*c*) of the Stamp Act, 1879 By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted

[illegible]

duty under art. 39 (*d*) of sch. I of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879

[I L. R., 7 Mad., 203

3 ———— and sch. II, art. 13, cl. (b)—*Kabuliat or lease of immoveable property for any purpose other than that of cultivation—Stamp duty, Exemption from, of such lease.*—A kabuliat or lease relating to immoveable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by art 13, cl. (*b*), of the Stamp Act I of 1879 so as to be exempt from stamp duty, but is chargeable with such duty under sch. I, art. 39, of that Act. NARAYAN RAMCHANDRA *v* DHONDU RAGHU

[I. L. R., 10 Bom., 173

1. ———— sch. I, art 44, cls (a) and (b)—*Mortgage-deeds—Covenants for quiet enjoyment—Per Curiam*—Cl (*a*) of art 44 of sch I of the Stamp Act, 1879, applies only to those deeds in which possession of the mortgaged property is given, or agreed to be given, at the time of the execution of the deed, or, in other words, where immediate possession of the property is given, or agreed to be given, by the terms of the deed to the mortgagees *Per* GARTH, *C.J.*—The principle of the distinction between the two

[illegible]

right to possession, does not, the lower duty is chargeable *Per* MITTER, *J*—The word "given" in cl (*a*) of art 44 points out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security for the mortgage-money, but where the mortgagee becomes entitled to enter upon possession irrespective of the consent of the mortgagor to make over possession, cl (*a*) will not apply *Per* FIELD, *J.*—The Stamp Act is a Revenue Act, and the rule of construction of such Acts is, that in case of a doubt, the construction most beneficial to the subject is to be adopted The words "agreed to be given" in art 44, cl (*a*), can only apply where there is an express or implied agreement to give possession; they will not apply where there is no such agreement, express or implied.

STAMP ACT (I OF 1879)—*continued.*

but the effect of the document is such that a mortgagee has merely a right which he can enforce in a Court of law to obtain possession. ANONYMOUS

[I. L. R., 10 Calc., 274

2. ———— *Construction*.—A mortgage-deed, dated the 4th August 1883, stipulated that possession was to be given to the mortgagee after the 31st May 1818, if the mortgage loan was not entirely repaid by that date. On the question being referred to the High Court, whether cl. (*a*) or cl. (*b*) of art. 44, sch. I, Stamp Act I of 1879, applied to the case,—*Held* that cl (*b*) applied The intention of cl. (*a*) is to cover cases of mort-

were worded "when possession of the property

[illegible]

tle. So ulations to the brought

duty. DAMODAR GUNGADHUR *v.* VAMANRAV LAKSHMAN . . I. L. R., 9 Bom., 435

4. ———— *Bond—Mortgage—Stamp Act, 1879, s. 3, cl 4 (c) and 13, ss. 7, 26, sch. 1, art. 13.*—A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest-money," and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar), upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers He further covenanted as follows. "If the supply of the rab be less than the

[illegible]

solely as a bond under art. 13, the contract being a

STAMP ACT (I OF 1879)—*continued.*

single one. *Held* by the Full Bench that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, C.J., and STRAIGHT, J., that in estimating the stamp duty payable on the instrument the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must not be taken into account *Reference by Board of Revenue, N.-W. P., I. L. R., 2 All., 654*, doubted; and *Gisborne Subal Bowri, I. L. R., 8 Calc., 284*, referred to by STRAIGHT, J. *Per* STUART, C.J, that, for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, plus R11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, *i.e.*, the price fixed at the meeting of

[illegible]

amount secured or limited to be ultimately recoverable under the instrument was R25, the amount borrowed, plus R21, the sum recoverable at R1

[illegible]

on

[illegible] 85

See SAMBHU CHANDRA BEPARI *v.* KRISHNA CHARAN BEPARI . . I. L. R., 26 Calc., 179

[illegible]

applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt It contemplates an instrument contemporaneous with the advance and with the loan. Where an instrument was an assignment by way of mortgage of valuable securities to secure a pre-existing debt, it was held to come under art. 44 of sch. I. of the Stamp Act For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER

[I. L. R., 27 Calc., 587
4 C. W. N., 524

6. ———— and s. 3 (13), sch I, art. 29, and art 5 (c)—*Mortgage—Assignment*

[illegible]

STAMP ACT (I OF 1879)—*continued.*

7. ———————— and art 29—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge* — In consideration of an advance of R1,150, on interest, repayable on demand, certain boat owners assigned to *S & Co.* their paddy boats, the boat owners retaining working and being responsible for the safety of the boats, and agreeing, so long as the sum advanced with interest should remain unpaid, to use their boats for the sole purpose of supplying paddy to *S & Co.* and to deliver such paddy (which was to be paid for at the market rate) at the end of each trip as directed by *S & Co.* On failure to make repayment on demand, *S & Co* were empowered to take possession and to sell the boats *Held* that the document was a mortgage, and not a pledge, and as such should be stamped under art. 41 (*b*) of Sch. I of the Stamp Act of 1879. IN THE MATTER OF KO SHWAY AUNG *v.* STRANG STEEL & CO

[I. L. R., 21 Calc., 241

8. ———————— *Mortgage—Consider-*

[I. L. R., 22 Mad., 164

debentures already issued to the B company, and the remaining £5,000 first debentures, subject to the prior charges thereon, should be held by the B company as security for a sum of £32,009-1s 10 previously mentioned in the deed *Held* that the ... deed" ... 1879. ... be said ... curity of £20,000 first debentures, but also upon the £8,000 second debentures, and the remaining £5,000 of the first debenture, stamp duty was payable on the new security, though a portion of the debt secured was included in the previous document on which duty had been paid; that the document was not a mere agreement to make a transfer, but an agreement to hand over the debentures on the execution of the document, and was therefore in effect an actual transfer, that the "mortgage-deed" was one with possession within art. 41 (*a*) of sch I of the Stamp Act, 1879, by which this document was governed, and that, in respect of the undertaking to make further advances, the document was liable to further duty as an agreement "not otherwise provided for." REFERENCE UNDER STAMP ACT, s 46

[I. L. R., 23 Mad., 207

———— sch. I, art. 46, and s. 34, and sch. II, cl. 2—*Agreements for sale of goods—*

STAMP ACT (I OF 1879)—*continued.*

Broker's bought and sold notes—Note or memorandum of sale.—The plaintiffs sued to recover damages ... defenda ... agreed t ... the tern ... notes, c ... ported to be signed by the broker and also by the defendant. These notes were, in fact, the sold notes ...

the documents were only memoranda of parol contracts and might be regarded as agreements for the sale of goods, and exempt from stamp duty, under cl. 2, sch. II, or at all events admissible on payment of a penalty—ss 7 and 34 *Held* that the documents in question were documents of the nature of a note or memorandum chargeable under art. 46 of sch. I, and were not exempt from duty under cl 2 of sch. II. RALLI *v* CARAMALLI FAZAL

[I. L R., 14 Bom., 102

———— sch. I, art. 49—*Policy of insurance—Life policy—Beng. Reg X of 1829.*—*Per* BROUGHTON, J.—*Held* that, inasmuch as Regulation X of 1829 was not recognized by the Supreme Court, life policies of insurance issued before 1860 did not require a stamp. RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE COMPANY

[I. L R., 7 Calc., 594 : 10 C. L. R., 561

1. ———— sch. I, art. 50—*Court Fees Act, sch II, art. 10 (a)—Power to vakil to obtain ...*

stamped as a power-of-attorney under art 50 (*b*) of sch I of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879 I. L. R., 9 Mad., 148

2 ———— cl. (b)—*Court Fees Act, sch II, art 10(a)—Vakalatnama—Power-of-attorney* —A document was given to *P* by thirty-six persons jointly interested in a certain sum of money authorising him to ...

3. ———— and s 3, cl 16, and s. 7—*Power-of-attorney—Instrument of trust.*—Ten mirasidars of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and

STAMP ACT (I OF 1879)—*continued.*

other communal income appertaining to their mirasi rights, to cultivate their maniems, to distribute to them proportionately to their shares the profits of certain common land, etc. *Held* that the instrument was a power-of-attorney and should bear a stamp of R5. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 386

1. ——— — sch. I, art. 52—*Tax—Receipt for money paid as taxes—Municipality, Receipt for house-tax exceeding twenty rupees*.—A receipt by a Municipality acknowledging payment of house tax exceeding twenty rupees requires a receipt stamp under sch. I, art. 52, of Act I of 1879. IN RE KARACHI MUNICIPALITY . I. L. R., 12 Bom., 103

2. ——————— and s. 3, cl. 17—"*Sarkhat*"—*Receipt*.—The defendant in a suit on a bond set up as a defence that the bond had been paid in part in sugarcane juice, and as evidence of this fact produced a document called a "sarkhat," [illegible]

the document was not a "receipt" within the meaning of the Stamp Act, 1879, but a memorandum of sugarcane juice supplied, and required no stamp. DEBI PRASAD v. RUPU . I. L. R., 6 All., 253

3.——————— *Receipt—Entry signed by creditor in debtor's book discharging debt.*—An entry made by a creditor in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt, is a "receipt" within the meaning of s. 3, cl. 17, of the Stamp Act, and as such must be stamped under art. 52, sch. I of that Act. QUEEN-EMPRESS v. JUGGERNATH

[I. L. R., 11 Calc., 267

1. ——— sch. I, art. 54—*Release—One-anna adhesive stamp—Full stamp duty leviable* — [illegible]

2.——————— *Release—Partition, Deed of.*—A Hindu executed in favour of his father [illegible]

allotted to the executant for life should go towards the shares of his sons at any partition effected after his death. *Held* that the instrument was not a deed of partition, but a release and should be stamped accordingly. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R., 18 Mad., 233

1.——— sch. I, art. 57—*Settlement—Stamp duty.*—Under art. 57 of sch. I of the Stamp Act, 1879, stamp duty on a settlement is to be calculated on the value of the property settled as set forth in such settlement *Held* that these terms do not mean the value of the interest or interests created by the settlement, but refer to the value of the property settled, which, it was intended by the Legislature, should be set forth in the settlement. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 8 Mad., 453

2. ——————— and art. 54 and s. 3 (19)—*Settlement—Testamentary document—Trust-deed*.—An instrument called a trust deed by the party executing it was intended to have immediate operation. It vested the property in the trustees at once, and the provisions as to the management and [illegible]

that the instrument fell under the definition of a [illegible]

——— sch. I, art. 60—*Transfer of estates and mining rights held under lease.*—In considera- [illegible]

for a term of forty-eight years, were transferred by deed for the residue of those terms. *Held* that the stamp duty payable on the transfer deed was to be regulated by the provisions of cl. 60 of sch. I of the Stamp Act, 1879. REFERENCE FROM BOARD OF REVENUE UNDER STAMP ACT, 1879

[I. L. R., 5 Mad., 15

——— sch. II, art. 1 (b)—*Affidavit.*—S, being desirous of obtaining copies of certain records in a suit in the Court of the Subordinate Judge of Sirsi, appeared before the nazir and clerk of that Court, and made an affidavit to the effect that she was the heir and legal representative of one of the defendants in that suit, and needed the copies for the purpose of producing them in a suit filed against her in the Court at Karwar. The affidavit, together with a duly stamped application, was presented by her [illegible]

[I. L. R., 12 Bom., 278

1. ——— sch. II, art. 2 (a)—*Agreement* [illegible]

this document was exempt from duty under sch II, art. 2 (a), of the Indian Stamp Act, 1879 REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 10 Mad., 27

STAMP ACT (I OF 1879)—*continued.*

2.———— *Exemption—Agreement for the sale of goods.*—An agreement for the sale of

———— sch. II, art. 11, and sch. I, art. 27 —*Vakil—Entry on roll of advocates—Exemption from duty.*—By art. 11 (*a*) of sch. II of the Stamp Act, 1879 (which exempts from duty the entry of an advocate, vakil, or attorney on the roll of any

———— sch. II, art. 12 (b)—*Security bond for due accounting for "property" received by virtue of office.*—The question was whether a bond executed by the sureties of an officer of Government to secure the due execution of his office and the due accounting by him of "public moneys, deposits, notes, stamp paper, postage labels, or other property" of Government committed to his charge was or was not exempted from stamp duty by the provisions of art 12 (*b*) of sch II of Act I of 1879, regard being had to the words "other property." *Per* STUART, C J, that such bond was one to secure the "due execution of an office" and the "due accounting for money received by virtue thereof," and nothing more, as the words "or other property" must be taken to mean property of the same kind as previously mentioned, and therefore "money" or the like of money, and such bond was therefore exempted from stamp duty by the

and the same thing, and as the due accounting for property received by him by virtue of his office was the "due execution of his office" by the officer in this case, such bond was one for the "due execution of an

bond was not one for the "due execution of an office," and being one for the due accounting for "property," it was not one for the due accounting for "money," and therefore it was not exempted from stamp duty REFERENCE BY BOARD OF REVENUE, N. W P.
[I. L. R., 3 All., 788

1.———— sch. II, art. 13, cl (b)—*Lease by a cultivator—Definite term Annual rent.*—Cl. (*b*), art. 13 of sch II of Act I of 1879, exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed R100 IN RE BHAVAN BADHAR . . I. L. R., 6 Bom., 691

2. ———— *Lease for planting cocoanut trees—Cultivator.*—A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of

3. ———— and cl. (c)—*Lease granted to a cultivator—Kabuliat—Exemption from stamp duty.*—By the term "cultivator" in art. 13, sch. II of the Stamp Act, 1879, only those persons are connoted who actually cultivate the soil themselves or who cultivate it by members of their household, or by

empted from stamp duty under art 13 (*c*), sch. II of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879. IN THE MATTER OF LACHMAN PRASAD
[I. L R, 5 All., 360

4. ———— cl. (c)—*Counterpart of*

MANGESH SHESHAGIRIAPA GOKARNKAR
[I. L R., 18 Bom, 546

1. ———— sch II, art. 15 (a)—*Receipt—Endorsement of payment of mortgage-deed*—An endorsement on a mortgage acknowledging the receipt of the sum thereby secured is exempt from stamp-duty under sch. II, art 15 (*a*), of the Indian Stamp Act, 1879. REFERENCE UNDER STAMP ACT, s. 46 . . I. L. R., 10 Mad, 64

2 ———— *Receipt given by Secretary of Club to a member for Club bill.*—Where a receipt in writing is given by the Secretary or other manager of a club to a member acknowledging a payment above R20 on account of a club bill, it is liable to stamp duty. REFERENCE UNDER STAMP ACT, s 46 . . . I. L. R., 10 Mad., 85

3. ———— and s. 3, cl. 17—*Receipt—Consideration—Barrister's fee. Honorarium not merces*—A receipt given by a Barrister for a fee is exempted from stamp duty by art 15 (*b*) of sch II of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 9 Mad., 140

STAMP ACT (I OF 1879)—*concluded.*

4. ——— *Payment of money without consideration—Receipt for Counsel's fees.* —A receipt given by Counsel for a sum above R20 paid to him as a fee for professional services is exempt from stamp duty. REFERENCE FROM THE BOARD OF REVENUE, N.-W. P. AND OUDH
[I. L. R., 16 All., 132

STAMP ACT (II OF 1899).

See STAMP ACT, 1879, s. 24
[I. L. R., 24 Bom., 257

STAMP DUTY.

——— Levy of—

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES SPECIAL CASES . I. L. R., 15 Mad., 23

——— Payment of—

See PAUPER SUIT—APPEALS.
[I. L. R., 1 Bom., 75
I. L. R., 8 Mad., 214
I. L. R., 11 Calc., 735

——— Right to recover—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—AGREEMENT
[I. L. R., 21 Bom., 126

See PAUPER SUIT—SUITS.
[2 B. L. R., Ap., 22

See SET-OFF—GENERAL CASES.
[I. L. R., 21 Bom., 126

STAMP DUTY, REFUND OF—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[1 Ind Jur, O. S., 57: 1 Hyde, 149
Marsh., 274
1 Mad, 127
12 W. R., 376

See STAMP ACT, 1879, s. 51.
[I. L. R., 16 Mad., 459
I. L. R., 18 Mad., 235

1. ——— Remanded case.—The stamp duty is refundable, and should not be charged to the respondent, in a case remanded. MASSEYK *v.* JUGOBUNDHOO DUTT . . . 1 W. R., Mis., 12

2. ——— *Held* by the ma-

MATTER OF THE PETITION OF DOORGA DASS DUTT
[B. L. R., Sup. Vol., 511: 6 W. R., Mis., 65
1 Ind. Jur., N. S., 401

IN RE PROSUNNO CHUNDER ROY CHOWDRY
[11 B. L. R., 372 note

STAMP DUTY, REFUND OF—*concluded.*

S. C. PROSUNNO CHUNDER ROY CHOWDRY *v.* NUBO KRISTO CHATTERJEE . 18 W. R., 434

3. ——— Compromise pending appeal. —No refund of stamp duty can be allowed when a suit is compromised pending the hearing of an appeal preferred. LAND MORTGAGE BANK OF INDIA *v.* MEHTUS . . . . 4 B. L. R., Ap., 96

IN RE ABDUL HAMED CHOWDRY
[4 B. L. R., Ap., 96 note

4. ——— Refund of excess of stamp duty—*Court Fees Act (VII of 1870), ss. 13, 14, and 15.*—The plaintiff brought a suit for declaration

twenty times the malikana of R280, to which the

that the Court had no power to grant it, its power

properly ordered to pay. IN THE MATTER OF THE PETITION OF ZOYNOODDEEN HOSSEIN KHAN
[11 B. L. R., 370

S. C ZOYNOODDEEN HOSSEIN KHAN *v.* SECRETARY TO THE BOARD OF REVENUE . 20 W. R., 106

5.

it was held that, as the appellant was

was entitled to a refund of the stamp duty in full. BHIKOO MOLLAH *v* RASH MONEE DOSSEE
[9 W. R., 357

6 ——— Compromise of appeal before

GUJENDRO NARAIN ROY . 11 W. R., 168

STATEMENTS MADE OUT OF COURT.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R., 14 Bom., 572

STATUTE.

——— Promulgation of—

See ONUS OF PROOF—MORTGAGE
[B. L. R., Sup. Vol., 415

——— Repeal of, Effect of—

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 3

See CASES UNDER EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871.
[I. L. R., 1 Bom., 287

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.
[I. L. R., 1 Mad., 223

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION.
[I. L. R., 1 All., 599
I. L. R., 2 Calc., 225

——— 5 & 6 Edw. III, c. 16.

See SALARY . 3 Moore's I. A., 435

——— 32 Hen VIII, c. 34

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.
[I. L. R., 14 Calc., 176

——— 13 Eliz., c. 5.

See DEBTOR AND CREDITOR
[1 Hyde, 178
2 Ind. Jur., O. S., 7
1 W. R., 41
I. L. R., 10 Calc., 616
L. R., 11 I. A., 10
I. L. R., 11 Bom., 666
I. L. R., 13 Bom., 434

See INSOLVENT ACT, s. 26.
[I. L. R., 3 Calc., 434

See TRANSFER OF PROPERTY ACT, s. 53
[I. L. R., 22 Calc., 185
I. L. R., 23 Mad., 184

——— *Doctrine of fraudulent conveyance void against creditors* — The doctrine of a fraudulent conveyance being void as against creditors held to be a principle of Hindu as it is of English law under 13 Elizabeth, c. 5. SHAMKISSORE SHAW *v.* COWIE . 2 Ind. Jur., O. S., 7

See SUDHEBKEENA CHOWDHRAIN *v.* GOPEE MOHUN SEIN . . . . . . 1 W. R., 41

STATUTE—*continued.*

——— 27 Eliz., c. 4.

See DEBTOR AND CREDITOR 1 W. R., 41

See TRANSFER OF PROPERTY ACT, s. 53
[I. L. R., 22 Calc., 185

See VOLUNTARY CONVEYANCE
[22 W. R., 60

——— 43 Eliz., c. 4.

See BOMBAY MUNICIPAL ACT, 1888, ss. 143, 144 . I. L. R., 16 Bom., 217

See WILL—CONSTRUCTION.
[14 B. L. R., 442

——— 3 Jac. I, c. 7.

Stat. 3 Jac. I, c. 7, has not been extended to India. WILKINSON *v.* ABBAS SIRKAR
[3 B. L. R., O. C., 96

——— 21 Jac. I, c. 16.

See ENGLISH LAW—LIMITATION
[5 Moore's I. A., 43, 234

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[5 Moore's I. A., 43

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8. ———— *Intention of Legislature in framing Act.*—It is not for a Civil Court to speculate upon what was in the mind of the Legislature in passing a law, but the Court must be bound by the words of the law judicially construed. MOHESH CHUNDER DOSS *v.* MADHUB CHUNDER SIRDAR
[13 W. R., 85

9. ———— *Madras Municipal Act (I of 1894)—Inaccuracy in Act.*—Where in an Act of the Legislature the context discloses a

10. ———— *"Objects and reasons" of Act—Forms in which Bill came before Council.*—For the purpose of ascertaining the intention of the Legislature in passing an Act, where that intention, so far as can be gathered from the Act itself, appears doubtful, the "objects and reasons" may be referred to. It is not, however, permissible

STATUTES, CONSTRUCTION OF —*continued.*

to refer, for this purpose, to the various forms in which the Bill was brought before the Legislature. MOOSA *v.* ESSA . . I. L. R., 8 Bom., 241

11. ——— *Specific Relief Act (I of 1877), s 9—Objects and reasons for Bill —Intention of Legislature.—Quære*—Whether in const ... Bill ... of tl ... *Essa,*] ...
JHALA *v.* GOUR MOHUN JHALA [I. L. R., 19 Calc., 544

12. ——— *Reference to objects and reasons and to report of Select Committee.*—In construing a statute the Court cannot refer to the statement of objects and reasons attached to a Bill, or to the report of a Select Committee, or to the debates of the Legislature, but can only look to the statute itself. *Queen-Empress* v. *Kartick Chunder Das, I. L. R., 14 Calc., 721,* and *Romesh Chunder Sannyal* v *Hiru Mondal, I. L. R., 17 Calc, 852,* dissented from on this point. KADIR BAKHSH *v.* BHAWANI PRASAD [I. L. R., 14 All., 145

13. ——— *Penal Code, s. 295 Construction of—Reference to report of Indian Law Commissioners and of Select Committee.*—For the purpose of construing a section of an Act ...
CHUNDER SANNYAL *v.* HIRU MONDAL . [I. L. R., 17 Calc., 852
RAMACHANDRA JOISHI *v* HAZI KASSIM [I. L. R., 16 Mad., 207

14. ——— *Administrator-General's Act (II of 1874)—History of passing of Act—Object and reasons for Act and Report of* ...
ducing it, though not admissible in England to explain a statute, have been in this country taken ...
Calc, 721, referred to. ADMINISTRATOR-GENERAL OF BENGAL *v* PREM LALL MULLICK [I. L. R., 21 Calc., 732

Held by the Privy Council on appeal that it is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object being that the statutory law bearing on the subject should be collected and made applicable to the existing ...
ADMINISTRATOR-GENERAL OF BENGAL *v.* PREMLAL MULLICK . . . I. L. R., 22 Calc., 788 [L. R., 22 I. A., 107

15. ——— *Proceedings of Legislature.—Per* PIGOT, J.—Proceedings of the Legislature cannot be referred to as legitimate aids to the construction of an Act *Administrator-General of Bengal* v. *Premlal Mullick, I. L. R., 22 Calc., 788 : L. R., 22 I. A., 107,* followed. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO [I. L. R, 22 Calc., 1017

QUEEN-EMPRESS *v.* BAL GANGADHAR TILAK [I. L. R., 22 Bom., 112

16. ...

17. ——— *Marginal notes to sections of Act.*—Marginal notes are no part of an enactment. DUKHI MOLLAH *v.* HALWAY [I. L. R., 23 Calc, 55

18. ——— *Marginal notes to sections of Act*—Marginal notes to sections of an Act do not form part of the Act. *Sutton v. Sutton, L R., 22 Ch. D, 511,* and *Dukhi Mollah v. Halway, I L R., 23 Calc, 55,* followed. PUNARDEO NARAIN SINGH *v.* RAM SARUP ROY [I. L. R., 25 Calc., 858 2 C. W. N., 577

19. ——— *Codifying, Object of.*—The object of codifying a particular branch of the law is that on any point specifically dealt with the law should thenceforth be ascertained by interpreting the language used in that enactment instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions. The language of such an enactment must receive its natural meaning, without any ...

20. ——— *Chutia Nagpore Encumbered Estates Act's (VI of 1876 and V of 1884)—Deo Estates Act (IX of 1886)—Marginal notes to Acts.*—The State publication of the Indian Acts being framed with marginal notes, such notes

STATUTES, CONSTRUCTION OF —*continued.*

[illegible]

PARASHRAM JETHMAL *v.* RAKHMA [I. L. R., 15 Bom., 299

22. ———— *Practice in contravention of the law — Hardship* — A practice [illegible] by extraneous considerations, such as questions of hardship. BALKARAM RAI *v.* GOBIND NATH TIWARI [I. L. R., 12 All., 129

23. ———— *Distinction between affirmative commands and negative prohibition—Irregularities and illegalities.*—As a principle of the interpretation of statutes, a distinction [illegible] to more than an irregularity in procedure. In the latter, the doing of the prohibited thing is *ultra vires* and illegal, and therefore without jurisdiction. RAMESHUR SINGH *v.* SHEODIN SINGH [I. L. R., 12 All., 510

24. ———— *Stamp duty, Charge of.*—If the express words of an Act do not [illegible]

25. ———— *Special and general procedure.*—Inconvenience pointed out of introduc- [illegible]

26. ———— *Retrospective effect of Act.*—Statutes are *primâ facie* deemed to be prospective only. "*Nova constitutio futuris formam imponere debet, non præteritis*" *Moon* v. *Durden, 2 Exch., 22,* approved of. DOOLUBDASS PETTAMBERDASS *v* RAMLOLL THACKOORSEYDASS [5 Moore's I. A., 109

CHUTTERDHAREE MISSER *v.* NURSINGH DUTT SOOKOOL . . 3 Agra, 371 [Agra, F. B., Ed. 1874, 163

27. ———— *Alteration in procedure—Retrospective effect of Act.*—Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings. HAJRAT AKRAMNISSA BEAM *v.* VALIULNISSA BEGAM [I. L. R., 18 Bom., 429

BALKRISHNA PANDHARINATH *v.* BAPU YESAJI [I. L. R., 19 Bom., 204

28. ———— *Acts relating to* [illegible] status of the defendant. Pending his appeal, Act VI of 1895 was passed, which repealed s. 73 At the [illegible] conferring [illegible] procedure, [illegible] repeal is [illegible] in the same relating to procedure. GANGARAM *v.* PUNAMCHAND NATHURAM . I. L. R., 21 Bom., 822

29. ———— *Hereditary* [illegible]

30. ———— *Retrospective effect of Acts, Principle as to—Mad Act VIII of 1865.*—In a suit for rent for 1865, 1866, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January 1866. *Held* (reversing the decision of the Civil Judge) that Act VIII of 1865 was inapplicable to the case. The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to procedure are not exceptions, but the question here was not one of processual, but of material law MORRIS *v.* SAMBAMURTHI RAYAR . 6 Mad., 123

31. ———— *Penal provision in statute—Retrospective effect.*—Retrospective effect is not to be given to the penal provision of s. 2, Bengal Act VI of 1862 NOBOKANTH DEY *v* BORADAKANTH ROY . . . 1 W. R., 100

STATUTES, CONSTRUCTION OF —*continued.*

32. ———————— *Penal statute—Bengal Excise Act (Beng. Act VII of 1878).*—Penal statute must be construed strictly, *i.e.*, nothing is to be regarded as within the meaning of the statute which is not within the letter and clearly and intelligibly described in the very words of the statute itself. EMPRESS *v.* KOLA LALANG [I. L. R., 8 Calc., 214: 10 C. L. R., 155

33. ———————— *Penal statute—Act XXXI of 1860.*—A pen[illegible] statute should, when its meaning is doubtful, be [illegible]strued in the manner most favourable to the libert[illegible] of the subject, and this is more especially so when the penal enactment is of an exceptional character. REG. *v.* BHISTA BIN MADANNA . . . I. L. R., 1 Bom., 308

34. ———————— *Penal Code (Act XLV of 1860) s. 499—English law of defamation.—Semble*—S. 499 of the Indian Penal Code should be construed without reference to the English law. IN RE NAGARJI TRIKAMJI I. L. R., 19 Bom., 340

35. ———————— *Repeal by implication—Repugnancy.*—Statutes are not to be held to be repealed by implication, unless the repugnancy between the new provision and a former statute be plain and unavoidable. SITAPATHI NAYUDU *v.* QUEEN . . . . I. L. R., 6 Mad., 32

36. ———————— *Implied repeal—Civil Procedure Code, 1859, s. 187—Act IX of 1850, s. 101.*—A special enactment is not impliedly repealed by a subsequent general enactment, if the two enactments are not so repugnant as to be incapable of standing together. Act IX of 1850, s. 101, was not repealed by s 187 of Act VIII of 1859. SABAPATI MUDALIYAR *v.* NARAYANSVAMI MUDALIYAR . . . . . . 1 Mad., 115

37. ———————— *Effect of repeal—Retrospective effect—Dekkan Agriculturists' Relief Act, 1879—General Clauses Consolidation Act, 1868, s 6.*— The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in s. 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An Act passed to promote some public important object, such as the protection of the property of the Dekkan agriculturists, may be given on that account a retro-active operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act. SHIVRAM UDARAM *v.* KONDAJI MUKTAJI [I. L. R., 8 Bom., 340

38. ———————— *Law governing suit when law is changed pending suit.*—The law as it exists when a suit is commenced must decide the rights of the parties to the suit, unless the Legislature has expressed a clear intention to vary the relative rights of the parties to each other in the new law. Rule followed in the interpretation of Act X of 1859. BUNGSHEEDHUR DOSS *v.* MAHOMED KHULEEL . . . . . 1 Hay, 369

39. ———————— *Alteration of law while suit is pending—Act XIX of 1857, s. 219—Repeal, Effect of.*—Where the law is altered while a suit is pending, the law as it exists when the action was commenced must decide the rights of the parties, unless the Legislature, by the language used, shows a clear intention to vary the mutual relations of such parties. GUJERAT TRADING COMPANY *v.* TRIKAMJI VELJI . 3 Bom., O. C., 45

40. ———————— *Repeal, Effect of, on right of action.*—A right of action is not taken away by a change in the law, unless by express enactment; but in the case of mere procedure, unless something is said to the contrary, the new law, where its language is general in its terms, applies without reference to the former law or procedure. FRAMJI BOMANJI *v.* HORMASJI BARJORJI [3 Bom., O. C., 49

41. ———————— *Right of suit—Act XVI of 1842—Act VIII of 1868, s. 1—Act XIV of 1870, s. 1.*—On the 27th of June 1866 it [illegible] a zemindar and D. [illegible]

brought for enhancement of rent. At the date of *the agreement Act XVI of 1842 was in force.* The settlement of the district, where the land in respect of which the agreement was made was situate, expired on the 1st of July 1870, before when Act XVI of 1842 was repealed by Act VIII of 1868, which Act was repealed by Act XIV of 1870, both Acts saving any right or title which had already accrued. *Held* that no right of action to avoid or right to repudiate the engagement of the 27th of June 1866 accrued to the zamindar before the passing of those Acts. DEOJEET *v.* BHUGWANT . 6 N. W., 373

42. ———————— *Gujarat Talukhdars' Act (Bom Act VI of 1888), s. 31, cl. 2—Retrospective operation—Collector refusing to confirm sale without sanction under Act passed whilst decree was under execution.*—A decree upon a mortgage-bond passed against part of a talukhdar's estate on the 15th August 1887 was transferred [illegible]

STATUTES, CONSTRUCTION OF —*continued.*

to interfere with that vested right. That presumption was not rebutted by any intention to interfere appearing in the Act itself. KALIAN MOTI *v.* PATHUBHAI FALJIBHAI . I. L. R., 17 Bom., 289

43. ——— *Statutes making contracts void and those prohibiting actions on them.*—The distinction between enactments which declare contracts *absolutely void* and *those which* simply provide that no action shall be brought upon such contracts pointed out. VISSAPPA *v.* RAMAJOGI . . . . . . 2 Mad., 341

44. ——— *Statute imposing duty—Action for failure to perform it.*—Where a statute imposes a duty, it, without express words, gives an action for the failing to perform that duty, and for wrongfully performing it. PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA . . 3 Mad., 35

45. ——— *Limitation Act,*

natural, *i.e.*, in a permissive, and not in an obligatory, sense DELHI AND LONDON BANK *v.* ORCHARD

[I. L. R., 3 Calc., 47 : L. R., 4 I. A., 127

46. ——— *Hindu Wills Act.*

47. ——— *Land Acquisition Acts.*—Acts relating to the acquisition of lands for

48. ——— *Statute of Limitations, 21 Jac. I, c 16.*—Where words have been

words in the Statute of Limitations, 21 Jac. I,

STATUTES, CONSTRUCTION OF —*continued.*

49. ——— *Bengal Rent Act, X of 1859, s. 77—Meaning of "determined."*—The word "determined" meant "legally decided by a Court of competent jurisdiction" GHALIB ALI *v.* KHILLOO

[3 N. W., 51 : Agra, F. B., Ed. 1874, 243

50. ——— *Road Cess Act (Beng Act X of 1871)—Interpretation clause, Construction of.*—In a suit on a bond by which certain land, admittedly lakhiraj, was mortgaged, the purchaser of a portion of the mortgaged property at an auction-sale for arrears of road cess due under Bengal Act X of 1871 was added as a defendant, and the

Held on the construction of Bengal Act X of 1871 that the sale had no such effect, and that the whole of *the property was liable to be sold in satisfaction* of the plaintiffs' claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs, it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature, It does not follow therefore that, because lakhiraj property is defined in the Road Cess Act, 1871, to be

51. ——— *Tax illegally levied.*—A statute not only enacts its substantive provisions, but as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments Where the Legislature has imposed certain duties both upon the tax-payer and upon the Municipal Commissioners, and those duties, as to the tax-payer, enforceable by penalties, are to be performed at a particular time,—*Held* that there was implied a "latent proposition of law," which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally-sanctioned tax at the period at which the duties are to be performed. LEMAN *v.* DAMODARAYA . I. L. R., 1 Mad., 158

52 ——— *Acts imposing taxes—Ambiguity in Acts.*—In order to impose a tax, due, rate, or toll upon a subject, the framers of the

subject upon whom the tax is sought to be imposed. Thus where the framers of the Surat bye-law imposed a tax of R1 per Surat man upon "copper" imported into Surat for consumption, it was held that copper wrought up into pots did not fall within the words of the bye-law. *Semble*—That when a tax is imposed upon goods imported into a town for consumption,

STATUTES, CONSTRUCTION OF —*continued.*

53. ———— *Bombay Municipal Act (III of 1872), s. 195—Act for public benefit.*—Where an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction could be given to it than where powers are to be exercised merely for private gain or other advantage. OLLIVANT *v* RAHIMTULA NUR MAHOMED [I. L. R., 12 Bom., 474

54. ———— *Letters Patent, High Court, cl. 12*—Every statute is to be interpreted and applied so far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of international law. All legislation is, *primâ facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign KESSOWJI DAMODAR JAIRAM *v.* KHIMJI JAIRAM I. L. R., 12 Bom., 507

55. ———— *Stat. 24 & 25 Vict., c. 67, s 22—Legislative power of the Governor-General in Council—"Indian territories now under the dominion of Her Majesty"—"Said territories"—28 & 29 Vict., c. 17, Preamble—32 & 33 Vict, c. 98, s. 1*—The Governor-General in Council has power to make laws and regulations

s. 1 of the 32 & 33 Vict., c. 98. Parliament has placed this construction upon s. 22 of the Indian Councils Act Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future *Postmaster-General of the United States* v. *Early, Curtis' Rep., U. S., p. 86*, referred to. It must be presumed that the laws and regulations of the Governor-General in Council are known to Parliament. *Empress* v. *Burah, I. L R., 3 Calc., 143 · I. L. R., 4 Calc., 183*, referred to ABDULLA *v* MOHAN GIR [I. L. R., 11 All., 490

56. ———— *Repeal of statute which repeals another, Effect of—General Clauses Consolidation Act (X of 1887), s. 7—Reformatory Schools Act (V of 1876), s. 2—Criminal Procedure Code (Act X of 1872), s. 318, (X of 1882), ss 3 and 899.*—The repeal of a statute repealing another statute does not revive the repealed statute. The law in India as embodied in s. 7 of the General Clauses Act (X of 1897) is the

STATUTES, CONSTRUCTION OF —*concluded.*

same as the law in England. *Queen-Empress* v. *Madasami, I. L. R., 12 Mad., 94*, and *Queen-Empress* v. *Manaji, I. L. R., 14 Bom., 391*, referred to and approved of. DEPUTY LEGAL REMEMBRANCER *v.* AHMED ALI . I. L. R., 25 Calc., 333 [2 C. W. N., 11

STATUTORY POWERS.

See CASES UNDER INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS

See RAILWAY COMPANY. [10 B. L. R., 241

See ZAMINDAR . 14 B. L. R., 209 [L. R., 1 I. A., 364

STAY OF EXECUTION.

See CASES UNDER EXECUTION OF DECREE —STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

STAY OF PROCEEDINGS.

See CRIMINAL PROCEEDINGS.
[I. L. R., 18 Bom., 581
I. L. R., 23 Calc., 610
2 C. W. N., 498, 639
3 C. W. N., 758

See INSOLVENT ACT, s. 5.
[I. L. R., 21 Bom., 297

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS . I. L. R., 21 Calc., 561 [I. L. R., 18 Bom., 65

1. ———— *Suits in respect of same subject-matter in different Courts—Civil* [illegible]

in July 1878. In December of the same year, *B & Co* instituted the present suit against *A* for an account and for damages caused by his alleged negligence *Held* that, as in both suits practically the same issues were triable, *A* was entitled, as having been first to institute his suit, to proceed in the Court in which he had chosen to bring his suit and to have the other suit stayed, but without pre- [illegible] suit [illegible] Court.

[illegible], 282

2. ———— *Procedure—Venue—Right of plaintiff to choose place of trial—Civil Procedure Code (Act XIV of 1882), ss. 27 and 53.*—The plaintiff brought this suit in the High Court

STAY OF PROCEEDINGS—*concluded.*

at Bombay against the defendant for defamation

secretary and manager of that Company. In April

July 1888 The defendant took out a summons calling on the plaintiff to show cause why the suit should not be stayed, and the plaint returned to the plaintiff, in order that, if he thought proper,

nesses resided at Wardha; (3) that the other suit

3. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 545, 546—Partition suit, Preliminary decree in—Preliminary decree, Appeal against—Powers of Appellate Court to stay subsequent proceedings.*—There is no provision in the Code of Civil Procedure which authorizes a Court to which an appeal is preferred against a preliminary decree for partition to stay, pending the hearing of the appeal proceedings taken by the Court which passed the decree subsequent to the passing of such decree BASANTA KUMAR SIRKAR v. BHUT NATH SIRKAR . . 1 C. W. N., 264

STEAM-TUGS.

1. — **Regulation as to tugs**—*River navigation—Towing.*—A party having two tugs, *A* and *B*, undertakes to supply tugs to two vessels, *P* and *Q*, in the order of their engagements as soon as the tugs are free. *A* is first free, and tows *P*, which has the prior claim, to Diamond Harbour, where she becomes disabled *B* subsequently tows *Q*, and, finding *A* disabled at Diamond Harbour, leaves *Q* and tows *P* out to sea, returning subsequently for *Q* *Held* that *B* was not justified in leaving *Q*, but that she ought to have towed her out to sea without interruption. NOWBJEE NUSSERWANJEE v JOHANNES . . . 1 Hyde, 293

2. ——— **Government pilots**— *Order to*

STOLEN PROPERTY.

See CHARGE TO JURY—SPECIAL CASES—STOLEN PROPERTY. [I. L. R., 15 Bom., 369

1. OFFENCES RELATING TO.

1. ——— **Concealment of stolen property**—*Penal Code, ss 411, 414.*—*Held* that the prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, Penal Code, and of assisting in the concealment of stolen property under s. 414 which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it GOVERNMENT v NOWLIA [1 Agra, Cr., 9

2. ——————— *Penal Code (Act XLV of 1860), s. 411—Evidence—Pointing out stolen property concealed in a place not under the accused's control.*—Where the sole evidence against a person charged with an offence under s 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person,—*Held* that this was not in itself sufficient evidence to support a conviction under the abovementioned section QUEEN-EMPRESS v. GOBINDA [I. L. R., 17 All., 576

3. — **Assisting in concealing or disposing of**—*Guilty knowledge.*—Where persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration. REG. v HARISHANKAR FAKIRBHAT [2 Bom., 136: 2nd Ed., 130

4. — — — **Voluntarily assisting in the disposal of stolen property**—*"Believe"—"Suspect"—Penal Code, s 414*—The word "believe" in s. 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity

5. ——— *Penal Code, ss 193 and 414—Intention to get innocent person punished—Separate offences, Conviction of*—Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

innocent person punished as an offender,—*Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating *false evidence for use in a stage of a judicial* proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code. EMPRESS *v* RAMESHAR RAI . . I. L. R., 1 All., 379

6. ——— Money obtained on forged money orders—*Penal Code, s. 410.*—Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410. QUEEN *v.* MON MOHUN ROY [24 W. R., Cr., 33

7. ——— Receiving stolen property—*Proof of guilty knowledge.*—In a case in which the

8. ——— *Evidence—Penal Code (Act XLV of 1860), s. 411.*—To constitute the offence of receiving stolen property, there must be some proof that some person other than the accused had possession of the property, before the accused got possession of it. ISHAN MUCHI *v.* QUEEN-EMPRESS . I. L. R., 15 Calc., 511

9. ——— *Penal Code, ss. 411 and 409—Criminal breach of trust.*—A prisoner cannot be convicted, under s. 411 of the Penal Code, for dishonestly receiving or retaining stolen property, in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust QUEEN *v.* SHUNKUR . 2 N. W., 312

10. ——— *Property stolen at dacoity—Penal Code, s. 412—Proof of commission of dacoity.*—In order to sustain a conviction, under s. 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. QUEEN *v.* JOGESHUR BAGDEE . . 7 W. R., Cr., 109

QUEEN *v.* BISHOO MANJEE 9 W. R., Cr., 16

11. ——— *Evidence of dis-*

factorily explained IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR 25 W. R., Cr., 10

12. ——— *Penal Code, s. 411—Animal "nullius proprietas"—Bull set at large in accordance with Hindu religious usage—Appropriation of bull.*—A person was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had

[I. L. R., 8 All., 51

13. ——— *Penal Code,*

bar to the 411 of the alleged to

SARANU . . . . I. L. R., 6 Mad., 373

14. ——— *Habitually receiving stolen property—Penal Code, s. 413.*—A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates. QUEEN-EMPRESS *v.* BABURAM KANSARI . I. L. R., 19 Calc., 190

15. ——— Possession of stolen property—*Evidence of theft.*—Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume, in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing. QUEEN *v.* PORDMESHUR AHEER . . . 23 W. R., Cr., 18

17. ——— *Fraudulent possession of property reasonably suspected of being stolen—Police Act (XIII of 1856), s. 35, cl. (1)*—

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

EMPRESS v. DHANJIBHAI EDULJI
[I. L. R., 20 Bom., 348

18. ——— — *Presumption—Penal Code, s. 411—Receiver of stolen property—Presumption as to possession of property after*

account as to how he became possessed of the property, would, under ordinary circumstances, raise a probable presumption of his guilt, but where, as in

how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. *Rex v. Adam, 3 C. & P., 600; Rex v Cooper, 8 C. & P., 318; Rex v. Partridge, 7 C. & P. 551,* followed. INA SHEIKH v. QUEEN-EMPRESS . . I. L. R., 11 Calc., 161

19. ——— ——— *Penal Code, s 411—India-rubber, Possession of—Smuggling.*—Where a person was charged under s 411 of the Penal Code with having received stolen property (rubber, the

QUEEN v. DASSORUT DASS 18 W. R., Cr., 63

And *see* QUEEN v GOURBE CHURN DOSS
[19 W. R., Cr., 38 note

20. ——— *Presumption—Dishonest receipt of stolen property—Dacoity—*

21. ——— *Possession of members of joint family—Finding stolen property in joint family house —Held* the bare finding stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction. QUEEN-EMPRESS v. NIRMAL DASS . . I. L. R., 22 All., 445

22. ——— ——— *Penal Code, ss. 411, 414—Concealment of stolen property—Husband and wife*—The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband *Held* that that constituted the possession of the husband rather than that of the wife. QUEEN v. DESILVA . . 5 N. W., 120

23. ——— Res nullius—*Bull set at large in accordance with Hindu religious usage—Penal Code, ss 410, 411.*—A Hindu who, upon the death of a relative, dedicates or lets loose a bull, in accordance with Hindu religious usage, as a pious act for the benefit of the soul of the deceased, thereby surrenders and abandons all proprietary rights in the animal, *which thereafter is not "property" which is capable* of being made the subject of dishonest receipt or possession within the meaning of ss. 410 and 411 of the Penal Code *Queen-Empress v Bandhu, I. L. R., 8 All., 51,* and *Queen-Empress v. Jamura, Weekly Notes, All, 1884, p 67,* referred to. QUEEN-EMPRESS v. NIHAL . I. L. R., 9 All., 348

24. ——— ——— *Penal Code, ss. 403, 429—Bull dedicated to an idol.*—A bull dedicated to an idol and allowed to roam at large is not *feræ bestiæ* and therefore *res nullius,* but *primâ facie* the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership Such an animal can therefore be the subject of theft and criminal misappropriation QUEEN-EMPRESS v NALLA
[I. L. R, 11 Mad., 145

25. ——— Retaining stolen property—*Penal Code, s 411—Knowledge.*—The offence of dis-

26. ——— ——— *Evidence of*

27. ——— ——— *Penal Code, s. 411—Proof that the property is stolen property necessary—Guilty knowledge of retainer.*—Where a person is accused of an offence under s. 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of the property and does not account for his possession. The prosecution must prove both that the property was stolen and that the accused received it dishonestly QUEEN EMPRESS v. BUBKE . I. L. R., 6 All., 224

28. ——— ——— *Penal Code, s. 411—Dishonest retention of stolen property—*

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*concluded.*

Property belonging to different owners—Separate convictions.—Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times,—*Held* that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. *Ishan Muchi v. Queen-Empress, I. L. R., 15 Calc., 511,* approved. QUEEN-EMPRESS *v.* MAKHAN [I. L. R., 15 All., 317

29. ———— *Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumption.*—Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to

[illegible]

Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen,—*Held* that the disappearance of the document

[illegible]

2. DISPOSAL OF, BY THE COURT.

30. ———— [illegible]

[illegible]

31. ———— *Currency note—Right to, as between Government and the person*

[illegible]

MATTER OF THE PETITION OF COLLECTOR OF SALEM [7 Mad., 233

32. ———— Order of Court as to property—*Restoration of property by Criminal Court—Remedy by suit in Civil Court.*—If personal property, of which a complainant has been forcibly or illegally deprived, comes into the Magistrate's hands,

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF, BY THE COURT—*continued.*

he may order its restoration to its owner, otherwise the complainant must seek to recover it or its value through the Civil Court. RAMJEEBUN DOOBEY *v.* LUCHMONEE DABEA . W. R., 1864, Cr., 5

33. ———— *Criminal Procedure Codes, 1861, 1869, s. 132A.*—Under s. 132A, Criminal Procedure Code (Act VIII of 1869), no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. IN THE MATTER OF THE PETITION OF RASH MOHUN GOSHAMY. RASH MOHUN GOSHAMY *v.* KALI NATH RAHA . . . . . 19 W. R., Cr., 3

34. ———— *Disposal of, by*

[illegible]

dure Code. *Held* that the orders of the Assistant Magistrate were made without any jurisdiction. ANONYMOUS . . . . 5 Mad., Ap., 22

35. ———— *Disposal of, where prisoner acquitted.*—Where a person was accused of dishonestly receiving stolen property,

[illegible]

NILAMBHAR BABU . . I. L. R., 2 All., 276

36. ———— *Disposal of, by Criminal Court—Criminal Procedure Code, 1872, Ch. XXX, ss. 415, 416, 417—Restoration of pro-*

[illegible]

agreeing with the police, ordered the property to be restored to *A.* On application by the complainant, the District Magistrate found that *A* had removed, though not dishonestly, the property from *B*, a deceased person, and ordered the property to be given by the police to *B*'s heirs. It was so given. *Held* that the provisions of Ch. XXX of the Code of Criminal Procedure do not apply to such a case. Ss. 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or

[illegible]

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF, BY THE COURT—*continued.*

IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN. BASUDEB SURMA GOSSAIN *v.* NAZIROODDEEN . . I. L. R., 14 Calc., 834

But *see* IN RE HAREE BUNDHOO SANTRA [5 W. R., Cr., 55

37. ———— *Criminal Procedure Code, 1882, s. 517—High Court's Criminal Procedure Act (X of 1875), s. 115—"Any pro-*

case as property seized by the police or found on the

38. ———— *Criminal Procedure Code, 1882, s. 523—Code of Criminal Procedure, 1872, ss 415 and 416—Delivery of property seized or stolen—Inquiry into ownership.*—The

39. ———— *Criminal Procedure Code, 1882, ss. 517, 520, 523—Order of Magistrate restoring property alleged to be stolen—District Magistrate, Power of, to set aside such order.* Where on acquittal a Criminal Court passes an order for restoration of property under s 517 of the Criminal Procedure Code (Act X of 1882),

set it aside QUEEN-EMPRESS *v.* ABHRAM UMAR [I. L. R., 8 Bom., 575

40. ———— *Criminal Procedure Code, 1882, s. 517—Order as to property as to which offence has been committed—Discharge of accused.*—On the dismissal of a charge against

OF THE PETITION OF BASUDEB SURMA GOSSAIN. BASUDEB SURMA GOSSAIN *v.* NAZIRUDDIN [I. L. R., 14 Calc., 834

41. ———— *Criminal Procedure Code, s. 517—Disposal of calf, not in esse at time of theft.*—*R*'s cow having been stolen, the thief, after a lapse of a year and a half, was convicted. Six months after the theft, *V* innocently purchased the cow which, while in his possession, had a calf. The Magistrate, under s. 517 of the Code of Criminal Procedure, ordered that the cow and calf should be delivered up by *V* to *R*. *Held* that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal IN RE VEENEDE . . I. L. R., 10 Mad., 25

42. ———— *Criminal Procedure Code (Act X of 1882), ss 517 and 523—Disposal of property produced before a Court during an inquiry—Restoration of previous possession if no offence has been committed.*—S 517 of the Code of Criminal Procedure is the only section under which a Court can make an order for the disposal of property produced before it in the course of an inquiry or trial. And it has jurisdiction to pass the order only if the case falls within the section, that is, if it is property "regarding which an offence appears to have been committed, or which has been used for the commission of an offence" Otherwise, the only legal order which the Court

A not the been

be delivered to the complainant, from whose possession it had not been taken. *Held* that both the orders were *ultra vires* The Magistrate was therefore

possession. IN RE DEVIDIN DURGAPRASAD [I. L. R., 22 Bom., 844

43. ———— *Criminal Procedure Code (Act X of 1882), ss 517, 523, 524—*

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF, BY THE COURT—*continued.*

Order as to standing crops on land of which person asks to be restored to possession.—On 27th September 1897 complainant charged one *R* with criminal trespass under s 447 of the Penal Code (Act XLV of 1860). He alleged that in the previous July *R* had entered into possession of the land and sowed rice upon it, and that, when in the month of September 1897 he (the complainant) went to the field, *R* had turned him out by force and refused to vacate the land On the 17th November 1897 the case was heard by the third class Magistrate, who convicted *R* of the offence charged. On the following day (18th November 1897) the complainant applied to the Magistrate under s. 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops. The Magistrate ordered possession of the land to be restored to the complainant, but attached the crops under Ch XLIII of the Criminal Procedure Code. Thereupon one *V* intervened and claimed the crops as having been sown by himself His claim was disallowed, and the crops were ordered to be sold and the proceeds credited to Government under ss 523 and 524 of the Code. *Held* that the order passed under ss. 523 and 524 with reference to the crops were illegal. The crops were not property in respect of which the offence was committed, nor were they used in the commission of the offence. They were not such property as is referred to in s 517, 523, or 524 of the Criminal Procedure Code. NARAYAN GOVIND *v.* VISAJI . I. L. R., 23 Bom., 494

44. ———————— *Criminal Proce-*

ings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under s. 523 of the Criminal Procedure Code (Act X of 1882). An order, after trial, made by a Criminal Court for the restoration of property under s. 517 of the Criminal Procedure Code (Act X of 1882) is conclusive as to the immediate right to possession; where an order has to be made under s. 523, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion. The High Court declined to interfere with an order, made by a Magistrate under s 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner. QUEEN EMPRESS *v.* TRIBHOVAN MANEKCHAND

[I. L. R., 9 Bom., 131

STOLEN PROPERTY—*concluded.*

2. DISPOSAL OF, BY THE COURT—*concluded.*

45. ———————— *Criminal Procedure Code, 1882, s. 517—Order for the disposal of property by first class Magistrate—Appeal from such order to the Sessions Court.*—A decree-holder

decree against the accused At the Court-sale

as to whether "any offence appeared to have been committed regarding such property" The Sessions Judge had therefore no jurisdiction to hear any appeal from the first class Magistrate's order. IN RE ANANT RAMCHANDRA LOTLIKAR

[I. L. R., 10 Bom., 197

46. ———————— *Criminal Procedure Code, 1882, ss. 517, 520*—An order passed under s 517 of the Code of Criminal Procedure may be revised by a Court of appeal, although no appeal has been preferred in the case in which such order was passed QUEEN-EMPRESS *v* AHMED

[I. L. R., 9 Mad., 448

STOPPAGE IN TRANSITU.

See SALE OF GOODS.
[I. L. R., 17 Bom., 62

See VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF.
[2 Agra, 11
I. L. R., 14 Bom., 57

STORING JUTE

———— Storage of jute without license—*Beng Act II of 1872, s. 34—Criminal Procedure Code, 1861, Ch. XV*—Before a conviction for

STRANGER

——— Introduction of, into joint family.

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS
[I. L. R., 1 All., 429
I. L. R., 2 All., 898

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM WIDOW.
[18 W. R., 23
I. L. R., 9 Calc., 580
I. L. R., 12 Calc., 209

STRIDHAN.

See CASES UNDER HINDU LAW—STRIDHAN.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION I. L. R., 1 Mad., 281
[3 W. R., 49, 105
8 W. R., 519
2 Agra, 230
1 Mad., 85
5 Mad., 111
I. L. R., 2 Mad., 333

STRIKING OFF EXECUTION-PROCEEDINGS

See CASES UNDER ATTACHMENT—STRIKING OFF EXECUTION-PROCEEDINGS

See CASES UNDER EXECUTION OF DECREE—STRIKING OFF EXECUTION-PROCEEDINGS.

See CASES UNDER LIMITATION ACT, 1877, ART 179 (1871, ART. 167, 1859, S. 20)—STEP IN AID OF EXECUTION—STRIKING CASE OFF FILE, EFFECT OF.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, S 20)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE HOLDER
[I. L. R., 4 Calc., 877

SUB-LETTING.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS
[2 Agra, Pt. II, 202
W. R., 1864, Act X, 31
I. L. R., 20 All., 469

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 14 Bom., 384
[I. L. R., 15 All., 219, 231

SUBORDINATE COURT

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT — APPEALABLE ORDERS I. L. R., 3 Calc, 522

See CASES UNDER CRIMINAL PROCEDURE CODE, S 437

SUBORDINATE COURT—*concluded.*

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
[I. L. R., 22 Calc., 487

———Duty of—*Conflict of opinion in High Courts*—The lower Courts are bound to follow the [illegible]

S. C KORBAN ALI MIRDHA *v.* PITUMBARI DASI
[13 C. L. R., 256

SUBORDINATE JUDGE, JURISDICTION OF—

See COMPANIES ACT, S. 150.
[I. L. R., 17 All., 252

See DEKKAN AGRICULTURISTS' RELIEF ACT, S. 3 I. L. R., 15 Bom., 30
[I. L. R., 16 Bom., 128

See DEKKAN AGRICULTURISTS' RELIEF ACT, S. 4 . I. L. R., 19 Bom., 46

See DEKKAN AGRICULTURISTS' RELIEF ACT, S. 15 (*d*). I. L. R., 16 Bom., 351

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, ETC. I. L. R., 18 Bom., 61

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 21 Bom., 45

See PLAINT—RETURN OF PLAINT.
[I. L. R., 20 Bom., 675

See PROBATE—JURISDICTION IN PROBATE CASES . I. L. R., 25 Calc., 341

See RIGHT OF SUIT—CHARITIES AND TRUSTS I. L. R., 15 Bom., 148
[I. L. R., 21 Bom., 48

See VALUATION OF SUIT—SUITS.
[I. L. R., 14 Mad., 183
I. L. R., 22 Bom., 315

1. ——— Suit brought to set aside probate—A Subordinate Judge has no jurisdiction to try a suit brought to set aside a probate. BULDER SURMAH *v* TARANATH SURMAH 22 W. R., 416

2. ——— Complaint under Mad. Reg. IV of 1816, s. 35, cl. 1.—A Subordinate Judge has jurisdiction to entertain a complaint under cl. 1, s 35, of Madras Regulation IV of 1816 *Ponnusami Pillai* v *Pachai, I. L. R., 2 Mad., 335*, overruled PONNUSAMI *v* KRISHNA
[I. L. R., 5 Mad., 222

3. ——— Trial of suit for land—*Officer appointed in the Sonthal Pergunnahs under s. 2, Act XXXVII of 1855—Bengal Civil Courts Act, 1871—Reg III of 1872, s 5*—An officer in the Sonthal Pergunnahs, appointed by the Lieutenant-Governor of Bengal under s. 2 of Act XXXVII of 1855, although vested with powers of a Subordinate Judge under Act

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

VI of 1871, has jurisdiction to try suits in regard to land, etc., where the value of the matter in dispute exceeds the value of R1,000. RAM RUNJUN CHUCKERBUTTY *v.* RAM PROSAD DASS . 5 C. L. R., 128

4. ——— **Valuation of suits**—*Joinder of causes of action Civil Procedure Codes (Act VIII of 1859), ss 8, 6 ; (Act X of 1877), s 15—Bengal Civil Courts Act (VI of 1878), s. 19* – S. 6 of Act VIII of 1859 (corresponding with s. 15 of Act X of

[illegible]

R1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif. MASHOOLLAH KHAN *v* RAM LALL AGURWALLAH

[I. L. R., 6 Calc., 6

5. ——— *Suit for account—Claim valued at less than R5,000, but value to be accounted for exceeds that sum.—Quære*—Whether a first class Subordinate Judge has jurisdiction to try a suit for an account where the plaint states that the

[illegible]

6. ——— **Appeal transferred**—*Bengal Civil Courts Act, 1871—N.-W. P. Rent Act, 1881, ss. 206, 207, 208.*—A Subordinate Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI of 1871), has not the power to dispose of it in the manner provided by ss. 206, 207, and 208 of the N.-W. P. Rent Act, 1881 the District Judge alone has the power to dispose of appeals in that manner *Ram Parsad v. Rai Kishen, I L. R, 6 All., 36,* followed. LODHI SINGH *v.* ISHRI SINGH

[I. L. R., 6 All., 295

7. ——— **Appeal transferred**—*Act XII of 1881, ss. 189, 206, 207, 208.*—The defendant in a suit instituted in a Civil Court set up as a defence that it was cognizable in the Revenue Court. The Court of first instance (Munsif) disallowed this defence, and gave the plaintiff a decree. The defendant appealed to the District Judge, again contending that the suit was cognizable in the Revenue Court. The appeal was transferred by the District Judge to the Court of the Subordinate Judge. The Subordinate Judge dismissed the suit on the ground that it

[illegible]

8. ———*N.-W. P. Rent Act (XII of 1881), ss 93, 206, 207, and 208—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 22, cl 3 –Transfer of appeal in a Rent Court suit from the District Judge to the Subordinate Judge—Powers exerciseable by the Subordinate Judge.*—Cl (3) of s. 22 of Act XII of 1887 makes

[illegible]

Judge and are being heard by such Subordinate Judge. NANDAN PRASAD *v* CHANGUR

[I. L. R., 16 All., 363

9. ——— **Appeal referred by District Judge**—*Bengal Civil Courts Act (VI of 1871), s 26—Power of review—Civil Procedure Code, 1859, s. 376.*—Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under Act VI of 1871, s. 26, he does so as

[illegible]

[16 W. R., 203

10 ——— **Appeal from Munsif after Act XIV of 1869**—*Assistant Judges in Bombay Presidency.*—A decision passed on appeal from a decision of a Munsif by an Assistant Judge, subsequent to the date on which Act XIV of 1869 came into operation (14th March 1869), and prior to the date on which the Assistant Judges in the Bombay Presidency were invested with appellate powers under the Act (4th April 1869), was not illegal, as the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the old Regulations, under which the Assistant Judges had power to hear appeals. SAKHO NARAYAN KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR

[6 Bom., A. C., 238

11. ——— **Power to inquire into application for execution of decree against ancestor of Sirdar**—*Agent for Sirdars.*–Where

[illegible]

[8 Bom., A. C., 25

12 ——— **Mortgage lien above limit of Subordinate Judge's jurisdiction**—*Attachment.*—One *D* applied to the subordinate Court of Sasvad for the attachment and sale of certain immoveable

[illegible]

The Subordinate Judge raised the question whether he had jurisdiction to entertain the application and inquire into the merits of the alleged mortgage. He was of opinion that he had, and referred the question for the opinion of the High Court, which concurred in

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

his opinion and answered the question in the affirmative. PURSHOTAM SIDHESHVAR v. DHONDU AMRIT [I. L. R., 6 Bom., 582

13. ——— **Mortgage lien, Inquiry into**—*Collateral inquiry into a mortgage lien on attached property—Insolvency of a judgment-debtor.*—The plaintiff obtained a decree against *N* and *R* for R165-11-0 in the first class subordinate Court of Satara, and applied for execution against the person of *R*. When brought before the Court, *R* applied to be declared an insolvent under s. 344 of the Civil Procedure Code (Act X of 1877). The plaintiff then moved the Court to strike off his application for execution, and to send his decree to the second class subordinate Court of Vita for execution. The Satara Court accordingly sent the decree to the Vita Court and granted a certificate to the plaintiff under ss. 223 and 224 of the Civil Procedure Code. The Satara Court also

mortgage lien on it for R9,415-9-3. The Vita Court

Vita Court was to be stayed, pending the inquiry

[I. L. R., 6 Bom., 584

14. ——— **Subordinate Judge invested with powers of Small Cause Court**—*Civil Procedure Code, 1877, s. 525—Arbitration award.*—A Subordinate Judge, although invested

ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of the Civil Procedure Code (Act X of 1877). BALKRISHNA v. LAKSHMAN I. L. R., 3 Bom., 219

15. ——— *Difference between a Court of Small Causes constituted under Act XI of 1865 and a Court of a Subordinate Judge invested with the jurisdiction of a Judge of a Small Cause Court under s. 28 of Act XIV of 1869—Transfer of decree for execution—Act XI of 1865, s. 20—Code of Civil Procedure (Act XIV of 1882), s. 223—Act XIV of 1869, s. 28.*—The Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under s. 28 of Act XIV of 1869 do not thereby become "Courts of Small Causes constituted under Act XI of 1865." They merely exercise a similar jurisdiction. This makes their decisions final in the cases to which the jurisdiction extends, but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act and subject to different conditions. The Court of a Subordinate Judge exercising Small Cause Court powers is, under s. 5 of the Code of Civil Procedure (Act XIV of 1882), one of the "other Courts exercising jurisdiction of a Court of Small Causes," and, as such, its procedure is governed by the Civil Procedure Code without the variations provided by Act XI of 1865. Under s. 223 (*d*) of the Civil Procedure Code the Court which has passed a decree in its Small Cause Court juris-

16. ——— *Suit for interest*

PETHE v. GANPATRAV DAMODAR [I. L. R., 10 Bom., 69

17. ——— *Civil Procedure*

tion of a money-decree passed in his favour by the

s. 28, with Small Cause powers, acquires the jurisdiction of two Courts, he does not become the Judge

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

of two Courts, but remains the Judge of a Subordinate Court. MALHARI v. NARSO KRISHNA [I. L. R., 9 Bom., 174

18. ——— *Execution of decree—Transfer of decree for execution—Act XI of 1865, s. 20—Act XIV of 1869, s. 28*—The plaintiff, [illegible] against H and others [illegible]

[illegible] the defendant, who also had obtained a money- [illegible]

[illegible] *Dayalji v. Balu, I. L. R. 8 Bom. 230*, a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a Small Cause suit or not. If the two jurisdictions [illegible]

[illegible] fer, i.e., a dealing with the execution as in a suit tried in the usual way for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient without a formal transmission as to a distant Court. DHARAMDAS SANTIDAS v. VAMAN GOVIND [I. L. R., 9 Bom., 237

19. ——— *Civil Procedure Code (Act XIV of 1882), s. 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.*—In a suit brought by the plaintiff to recover R36-7-9 from the defendant, under the Small Cause jurisdiction of [illegible]

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

20. ——— *Appeal—Suit cognizable by a Court of Small Causes—Act XI of 1865, ss. 2, 6, 12, 21—Bombay Civil Courts Act (XIV of 1869), s. 28—Final decision.*—The plaintiff sued to recover R5 as damages for the wrongful removal of a tree. The suit was filed in the Court of a second class Subordinate Judge, who was invested, under Act XIV of 1869, s. 28, with the jurisdiction of a Judge of a Court of Small Causes. The case, which was in itself of the nature of a Small Cause, was, however, tried as an ordinary suit according to the rules of the Civil Procedure Code. The Subordinate Judge rejected the plaintiff's claim. An appeal was made to the District Court, which reversed the Subordinate Judge's decree, and awarded the claim. *Held* that, the suit having really been a Small Cause, no appeal lay to the District Court, though the Subordinate Judge did not use the procedure of Act XI of 1865. Having the Small Cause Court jurisdiction, the Subordinate Judge must be taken to have dealt with the case under that jurisdiction, even if he was not quite alive to it at the time. A suit taken cognizance of under s. 2, 6, or 12 of the Mofussil Small Cause Court Act (XI of 1865) does not cease to be a suit tried under the Act, because of some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality. S. 28 of the Bombay Civil Courts Act (XIV of 1869) does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts, but still it creates an additional and distinct jurisdiction. Since Act IX of 1887 came into force, the Court is to be regarded as two Courts in such cases. PITAMBER VAJIRSHET v. DHONDU NAVLAPA [I. L. R., 12 Bom., 486

21. ——— *Suit against Trustee—Person collecting or receiving subscriptions for building a temple—Civil Procedure Code (Act XIV of 1882), s. 30*—A person collecting and receiving subscriptions for the purpose of building a temple [illegible] come to at [illegible] them in the [illegible] spect thereof [illegible] il Procedure Code (Act XIV of 1882), in a Subordinate Judge's Court, and not in a Small Cause Court. MAHOMED NATHUBHAI v. HUSEN . I. L. R., 23 Bom., 729

22. ——— **Power of Subordinate Judge to try Munsif's case**—*Act XVI of 1868, ss. 13, 15, 16—Bengal Civil Courts Act (VI of 1871), ss. 19, 20—Civil Procedure Code, ss. 15, 578.*—*Per* PETHERAM, C.J., and BRODHURST, MAHMOOD, and DUTHOIT, JJ.—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to R1,000. *Per* PETHERAM, C.J.—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per* DUTHOIT, *J*—The words in s 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow, and they are therefore a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judges and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. BRODHURST and MAHMOOD, *JJ.*—S. 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction, and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades *Russick Chunder Mohunt* v. *Ram Lall Shaha, 22 W. R., 301*, and *Sufre-ool-lah Sircar* v. *Begum Bibee, 25 W. R., 219*, followed *Per* OLDFIELD, *J*—S. 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s. 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of lowest grade competent to try them *Held*, therefore, by PETHERAM, *C J.*, and OLDFIELD, BRODHURST, and MAHMOOD, *JJ*, where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction The plaint in such suit had been in the first instance presented to the Munsif, who had returned it, to be presented to the Subordinate Judge *Per* DUTHOIT, *J.*—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be [illegible]

[illegible]

23. ———— *Civil Procedure Code (Act XIV of 1882), s 15—Munsif, Jurisdiction of.* S 15 of the Civil Procedure Code does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court.

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

Ledgard v *Bull, L R, 13 I. A, 134*, distinguished. MATRA MONDAL *v* HARI MOHAN MULLICK

[I. L. R., 17 Calc., 155

See AUGUSTINE *v* MEDLYCOTT

[I. L. R., 15 Mad., 241

24. ———— *Bengal Civil Courts Act (VI of 1871), s 18—Sale in execution of decree—Local limits of jurisdiction.*—[illegible]

can only exercise jurisdiction within such local limits *Obhoy Churn Coondoo* v. *Golam Ali, I L. R, 7 Calc., 410*, and *Prem Chand Day* v. *Mokhoda Debi, I L. R, 17 Calc, 699*, followed. DAKHINA CHURN CHATTOPADHYA *v* BILASH CHUNDER ROY

[I. L. R., 18 Calc., 526

25. ———— *Concurrent jurisdiction with District Munsif—Suit of less than R2,500 in value—Quære*—Whether a Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than R2,500 in value. *Matra Mondal* v. *Hari Mohan Mullick, I L. R, 17 Calc., 155*, and *Nidhi Lal* v *Mazhar Husain, I. L. R, 7 All., 230*, followed KRISHNASAMI *v* KANAKASABAI . I. L. R., 14 Mad., 183

26. ———— *Bombay Civil Courts Act (XIV of 1869), s. 28—Provincial Small Cause Courts Act (IX of 1887), s 33—Judge exercising Small Cause Court jurisdiction.*—S 33 of Act IX of 1887 precludes a Subordinate Judge invested with Small Cause Court powers under s 28 of Act XIV of 1869 from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction BAROTE GAGA PARSHOTAM *v* PANJU RAMJAN

[I. L R., 14 Bom., 371

27. ———— *Bengal, N.-W. P, and Assam Civil Courts Act (XII of 1887), s 13, cl 2—District Judge Power of—Transfer of Property Act (IV of 1882), ss 88, 90—Sale in execution of mortgage decree—Execution of decree.*—When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole of a district, the District Judge is not competent, under s 13 (2) of the Bengal N.-W P, and Assam Civil Courts Act, to assign to them different areas so as to limit or define their respective jurisdictions, [illegible]

thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the district, but outside the area assigned to it by the District Judge BACHU KOER *v* GOLAB CHAND . I. L. R., 27 Calc., 272

28. ———— *Transfer to Subordinate Judge of appeal petition heard by and pending before District Judge Jurisdiction of Subordinate Judge to hear and determine the appeal*

SUBORDINATE JUDGE, JURISDICTION OF—*continued*

—Waiver of objection to jurisdiction, Effect of, when Court has no inherent jurisdiction.—An appeal, having been entered in a District Court against the decision of a District Munsif, was heard in part by the District Judge, who remanded the suit to the District Munsif for findings on fresh issues. Findings having been duly returned, the District Judge transferred the appeal to the Subordinate Judge, who heard and determined it *Held* that the District Judge had no power to transfer to a Subordinate Judge an appeal which was part heard and pending before him The only inherent jurisdiction that a Subordinate Judge has is in original suits under s. 12 of the Civil Courts Act. In appeals he only acquires jurisdiction under the last clause of s 13 of the said Act, which enables a District Judge to transfer appeals to him, and, unless that section is complied with, the Subordinate Judge has no jurisdiction to hear or determine any appeal S 13 does not authorize the transfer to a Subordinate Judge of an appeal part heard and pending before the District Judge The fact that objection was not taken to the jurisdiction of the Subordinate Judge did not confer jurisdiction upon him, the Subordinate Court not having inherent jurisdiction KUMARASAMI REDDIAR *v* SUBBARAYA REDDIAR

[I. L. R , 23 Mad., 314

29. ——————— *Act XIV of 1869, ss 23 and 24—Subordinate Judge appointed to assist another Subordinate Judge, Powers of*—Where a Subordinate Judge is deputed, under s. 23 of Act XIV of 1869, to assist another Subordinate Judge, the assistance by the Judge so deputed can only be afforded within the limits of his jurisdiction as fixed by s 24 of the Act, and cannot be invoked, except in matters within his competence. The plaintiff, having obtained a decree against the defendant in a suit in which the subject-matter of the suit and the amount of the decree exceeded R5,000 in the Court of a Subordinate Judge of the first class, presented it in that Court for execution The

second class Subordinate Judge ordered execution to issue. The defendant appealed, and this order was reversed. The plaintiff appealed to the High Court, and raised, for the first time, an objection that the second class Subordinate Judge had no jurisdiction to entertain the application for execution The defendant contended that this objection was taken too late on second appeal. *Held* that the second class Subordinate Judge has no jurisdiction to

be taken at any stage of the proceedings SIDHESHWAR PANDIT *v* HARIHAR PANDIT

[I. L. R., 12 Bom , 155

30 ——— ——— *Malicious prosecution — Suit against a Mamlatdar for malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge, Power of, to try such suit*—The defendant, who was a Mamlatdar, was required by his superior officer to clear his

he referred the case to the High Court. *Held* that the Subordinate Judge had jurisdiction to try the suit The defendant was sued in his individual, and not in his official, capacity; and the fact that he was a Mamlatdar when he prosecuted the plaintiffs could not affect the character in which he was sued. BANKAT HARGOVIND *v*. NARAYAN VAMAN DEVBHANKAR . I. L. R , 11 Bom., 370

31. ——————— *Malicious prosecution — Prosecution, when official — Bombay Civil Courts Act (XIV of 1869), s. 32—Bombay Act X of 1876, s 15—Prosecution instituted by order of superior officer.*—An officer of Government who prosecutes for an injury personal to himself is not generally acting in his official capacity as prosecutor If any particular class of interests is placed specifically under his tutelage, with a direction to guard them by the appropriate legal proceedings, suits instituted in the fulfilment of the duty thus

certain person for theft in the Magistrate's Court at Sirsi The accused was defended by the plaintiff, who was a pleader. During the hearing of the case the defendant in open Court made use of certain

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

pleaded that in lodging the complaint against the defendant he had acted in his official capacity and

fore the Court of the Subordinate Judge had no jurisdiction. The Subordinate Judge held that he had no jurisdiction, being of opinion that the defendant had prosecuted the plaintiff in his character as a

the Subordinate Judge had no jurisdiction, but he

ng in dismiss-
e plaint for
He therefore
Judge and

referred the plaintiff to the District Judge On appeal by the plaintiff,—*Held* by the High Cour that the defendant was sued as a private person for an alleged wrong to the plaintiff, and that the

32 ——— *Suit against Collector—Act done in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s. 15* —The

because they were not issued by the Mamlatdars in proper form. *Held* that the act of the defendants

33 ——— *Bombay Civil Courts Act (XIV of 1869), s. 32, as amended by the Bombay Revenue Jurisdiction Act (X of 1876), s. 15, and by Bom Act XV of 1880, s 3—Bom Reg II of 1827, s 43—Suit against officer of Government—Acts done by the defendant in his official capacity—Civil Procedure Code (1882), s 421*—On the death of the talukhdar of

dar, claiming damages for these wrongful acts

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

The suit was filed in the Court of the Subordinate Judge. *Held* that the acts complained of were done

34 ——— *Patil and kul-*

ordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876) *Held* that the suit was properly instituted in the Court of the Subordinate Judge, as the defendants were sued in their private capacity. It is not clear that the rules about impressment

tary bodies BUDHO v. KESO
[I L R, 21 Bom, 773

35. ——— *Money lent to public officer—Money lent to him in his official capacity—Bombay Civil Courts Act (XIV of 1869), s. 32*—The plaintiff had contracted to supply materials requisite for a public building The defendant was the Supervisor, Public Works Department, in charge of the works From time

SUBORDINATE JUDGE, JURISDICTION OF—*concluded.*

contracted by the defendant in his official capacity ? HANMANT ANYABA *v.* RAJMAL MANICKCHAND [I. L. R., 22 Bom., 170

36. ———— *Dismissal of suit*

there are two Subordinate Judges in the same place, one of such Judges is not competent to overrule the decision of the other. The Court is one, though there are separate presiding officers *Suraj Din* v. *Chattar, I. L. R., 3 All., 755,* and *Ram Pirpal* v. *Rup Kuari, I. L. R., 6 All., 269,* referred to. KHARAG PRASAD BHAGAT *v.* DUDHHARI RAI [I. L. R., 14 All., 348

37. ———— *Application for declaration of heirship—Bom. Reg. VIII of 1827, s. 2—Subordinate Judge invested with function of District Court under Act VII of 1889*—A Subordinate Judge who (under s. 26 of Act VII of 1889) has been invested by Government with the functions of a District Court under Act VII of 1889

SUB-REGISTRAR.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING SUIT . I. L. R., 15 Mad., 132

See REGISTRAR.

SUBROGATION.

See COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS. [I. L. R., 18 Calc., 31

SUBSCRIPTION.

See RIGHT OF SUIT—SUBSCRIPTION. [10 C. L. R., 107
I. L. R., 14 Calc., 64

SUBSISTENCE-MONEY.

1. ———— Payment of subsistence-money—*Civil Procedure Code, 1859, s. 276.* According to Act VIII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the

Under the present Code, it has to be paid into Court before the order for the arrest can be made.

2. ———— *Illegal commitment—Duty of jailor.*—Unless subsistence-money is paid before the commitment, the commitment is

SUBSISTENCE-MONEY—*continued.*

illegal The jailor is bound by the words of the Act. It is for him, and not for the prisoner, to see that the money is paid. IN THE MATTER OF THOMSON [Bourke, O. C., 421

3. ———— Fixing subsistence-money—*Detention in jail on decree of defendant arrested prior to decree—Right to discharge*—Where a defendant is arrested prior to decree under Act VIII of 1859, s 78, and a decree is afterwards obtained against him in the suit, the plaintiff, if he wishes to detain the defendant in prison, must have him brought before the Court, and his subsistence-money fixed, in the same way as in the case of an arrest in execution of a decree; and if he fails to do so, the defendant is entitled to his discharge from prison. IN THE MATTER OF CALLACHAND DASS [1 Ind. Jur., N. S., 337

S C RAMPERSAUD ROY *v.* CALLACHAND DOSS [Bourke, O. C., 423

4. ———— *Order for allowance—Application for discharge in absence of order—Civil Procedure Code, 1859, ss. 276, 278*—S H and two other debtors in the custody of the Sheriff on a *ca. sa.* appeared on a *habeas corpus* for the execution creditor to show cause why they should not be discharged. *S H* had been arrested in execution of a decree in a suit which was begun under the old procedure in the Supreme Court, and the

that a prisoner arrested on a *ca. sa.* must, within a convenient time, be brought before the Court to have his allowance fixed; that an "allowance" within the meaning of s. 276 or 278 of Act VIII of 1859

title him to be discharged; that a decree must be carried into execution by and under the direction of the Court which pronounces it by means of a special application to the Court, and an order passed thereupon; that a jailor or other officer cannot lawfully receive a prisoner for debt under commitment unless the preliminary payment of subsistence has been made in compliance with the order of the Court; and that the jailor cannot lawfully detain a judgment-debtor when the time limited for payment of any subsistence-money under the order of the Court passes without due payment accordingly. IN RE SUMBOO CHUNDER HALDAR. IN RE DOORGAPERSAUD MITTER. IN RE RAKHAS DOSS [Bourke, O. C., 59

SUBSISTENCE MONEY—*continued.*

5. ———— Right of debtor to discharge —*Omission to make order for allowance—Civil Procedure Code, 1859, ss. 276, 278.*—A debtor, having [illegible] illegal, as no order for his allowance under s. 276 of Act VIII of 1859 had been made. Sufficient sub- [illegible] advance be paid to the person to whose custody he is committed; that a similar payment must be received in advance every successive month pending the imprisonment; that if any such payment be not made, the prisoner is entitled to be released, that the "allowance" referred to in s. 276 of Act VIII of [illegible] the prisoner was not necessary, and was intended only as a relief to the execution-creditor; that the omission to have such order made did not render the arrest and imprisonment illegal; that in the absence of such order, s. 278 of Act VIII of 1859 ensured 4 annas a day as subsistence-money for the prisoner. AGA ALI KHAN *v.* JOYDOYAL PERSAUD

[Bourke, O. C., 52

6. ———— *Non-payment of subsistence-money in advance—Civil Procedure Code, 1859, s. 276.*—The monthly subsistence money under s. 276 of Act VIII of 1859 must be paid in advance; therefore, where a debtor was arrested and subsistence-money paid for January, but no further deposit was made till 4th February, the prisoner was held entitled to his discharge. IN RE KONOY LOLL DOSS . . . . Bourke, O. C., 51

7. ———— *Application for discharge on non-payment of subsistence-money—Petition for discharge—Civil Procedure Code, 1859, s. 278.*—A prisoner was arrested on the 30th of December on a *ca. sa.* dated the 24th of December, on [illegible] a prisoner applying for his discharge for non-payment of subsistence-money, that subsistence-money must be paid in advance by the execution-creditor before putting a writ of *ca. sa.* in force, that the discharge by the Sheriff of a prisoner detained on a writ of *ca. sa.* was equally imperative on the happening of any of the contingencies specified in s. 278 of Act VIII of 1859, and that on failure of subsistence-money the prisoner should be released, and further

SUBSISTENCE-MONEY—*concluded.*

detention of him by the person in whose custody he is was illegal. SPEYER *v.* JANSSEN

[Bourke, O. C., 28

8. ———— *Non-payment of subsistence money in advance—Act VIII of 1859, ss. 276, 278.*—A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the Jailor a sum sufficient for his subsistence money for twenty-seven days, at the established rate of 4 annas per day. On the 5th August a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the Jailor to cover any deficiency in the former payment. *Held* that the requirements of s. 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was entitled to his discharge under s. 278. DUTT *v.* CORNELIUS

[5 B. L. R., Ap., 79

9. ———— *Mode of payment* [illegible] the Jailor then having a balance of 4 annas over from the subsistence money for September. *Held* that there was a sufficient compliance with s. 276 of Act VIII of 1859. HALADHAR DEY *v.* AMBIKA CHARAN BOSE . . . . 5 B. L. R., Ap., 8

10. ———— Refund of subsistence-money — *Release at request of creditor—Bom. Act IV of 1865.*—Where the defendants were arrested through the Munsif's Court in execution of a decree, but were released at the request of the execution-creditor before they had been sent to the civil jail, it was held that the execution-creditor was en- [illegible]

11. ———— Effect of discharge of debtor — *Non-payment of subsistence-money* — [illegible] the Court, bars a second arrest and imprisonment in execution of the decree. APPIAH CHETTY *v.* CHENGADOO . 4 Mad., 76

SUBSTANTIAL INJURY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See QUESTION OF LAW.

SUCCESSION.

See CASES UNDER CONVERTS

See ENGLISH LAW—PRIMOGENITURE. [5 Bom., O. C., 172

See CASES UNDER HINDU LAW—INHERITANCE.

See MAHOMEDAN LAW—DEBTS. [I. L. R., 4 Calc., 142
I. L. R., 4 All., 361
I. L. R., 7 All., 822

See CASES UNDER MAHOMEDAN LAW—INHERITANCE.

See CASES UNDER MALABAR LAW—INHERITANCE.

See MARRIAGE SETTLEMENT [1 Ind. Jur., N. S., 290

See PARSIS . I. L. R., 1 Bom., 506
[I. L. R., 2 Bom., 75
I. L. R., 4 Bom., 537
I. L. R., 11 Bom., 1
I. L. R., 5 Bom., 506
I. L. R., 6 Bom., 151
I. L. R., 22 Bom., 355, 909

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL [I. L. R., 21 Calc., 997
L. R., 21 I. A., 163

See SALSETTE, LAW APPLICABLE IN [I. L. R., 19 Bom., 680

——— Deed altering course of, by Hindu law.

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE. [6 B. L. R., 202
13 Moore's I. A., 497

——— to permanent tenure.

See BENGAL TENANCY ACT, s. 16. [I. L. R., 24 Calc., 241

——— to raj.

See CASES UNDER HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY.

See JUDGMENT IN REM. [11 B. L. R., 244
14 Moore's I. A., 367

——— to talukhdari.

See CASES UNDER OUDH ESTATES ACT, 1869

SUCCESSION ACT (X OF 1865).

See CONVERTS . I. L. R., 10 Mad., 69
[I. L. R., 20 Bom., 53

——— ss. 2 and 3—*Minor*—The definitions of "minor" and "minority" in the Succession Act do not apply to cases in which a person enters into a contract on his own behalf, and not in any representative character under that Act SULTAN CHAND *v.* SMITH . 12 B. L. R., 358: 21 W. R., 221

——— s. 4

See DIVORCE ACT, s. 35. [5 B. L. R., Ap., 9
I. L. R., 5 Calc., 357
I. L. R., 9 Mad., 12

See HUSBAND AND WIFE. [8 B. L. R., 372
I. L. R., 1 Calc., 285

1. ——— *Operation of section—Rights acquired before passing of Act.*—The provisions of s. 4 of the Succession Act are prospective, and leave rights unaffected which had already been acquired before the Act passed. SARKIES *v.* PROSONOMOYEE DOSSEE [I. L. R., 6 Calc., 794: 8 C. L. R., 76

2. ——— *Married woman, Liability of—Separate estate—Restraint on anticipation—Husband and wife—Married Women's Property Act (III of 1874), s. 8.*—In a suit against a husband and wife, and the trustees of the wife's [illegible]

[illegible]

...perty Act, 1874, does not apply to contracts made before the passing of the Act. *Semble, per* COUCH, C J.—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate, notwithstanding the clause restraining anticipation. PETERS *v.* MANUK . 13 B. L. R., 383; 22 W. R., 175

3. ——— and s. 44—*Husband and wife—Parties with English domicile married in India—Succession to moveable property.*—H M, a British subject having his domicile in England married in Calcutta, in April 1866, C, a widow, who at the time of the marriage had also an English domicile C, after her marriage with H M, became [illegible]

[illegible]

granted to the Administrator General of Bengal, by whom the shares to which C became entitled as next of kin of her sons were realized. In a special case for the opinion of the Court under Ch VII, Act

SUCCESSION ACT (X OF 1865) —*continued.*

[illegible]

[illegible] in the hands of the Adminis- [illegible] MINISTRATOR-GENERAL OF BENGAL [I. L. R., 1 Calc., 412

4. ———— —*Marriage — Husband and* [illegible] *Succession to property.*—A per- [illegible] wife with [illegible] entitled to [illegible] property to [illegible] 4 and 44 of the Succession Act do not affect the law of succession, but relate to the immediate effect of marriage on moveable property belonging to either of the married persons, and not comprised in an ante-nuptial settlement HILL *v.* ADMINISTRATOR-GENERAL OF BENGAL . I. L. R., 23 Calc, 506

——— s. 5.

See FOREIGN STATE.
[I. L. R., 11 Calc., 17

——— and s. 10.

See DOMICILE . I. L. R., 4 Calc., 106

——— s. 35.

See CONVERTS . I. L. R., 9 Mad., 466

——— s 42.

See PARSIS I. L. R, 2 Bom., 75

——— ss. 48, 54.

See WILL—VALIDITY OF WILL
[I. L R., 7 Mad, 515

——— s. 50

See CASES UNDER WILL—ATTESTATION
See CASES UNDER WILL—SIGNATURE.

——— s 54

See WILL—CONSTRUCTION
[I. L R, 4 Mad., 244

——— s 56—*Revocation of will—Lawful polygamous marriage*—The will of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, held to be revoked by such second marriage under s 56 of the Succession Act. GABRIEL *v.* MORDAKAI
[I. L. R., 1 Calc, 148

——— s 58

See WILL—ATTESTATION.
[1 C. W. N., 428

——— s 68

See WILL—CONSTRUCTION
[I. L. R., 15 Mad., 448

SUCCESSION ACT (X OF 1865) —*continued.*

——— s. 75.

See WILL—CONSTRUCTION.
[I. L. R., 6 All., 583

——— s. 82.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS — ESTATES ABSOLUTE OR LIMITED I. L. R., 24 Calc., 646
[I. L. R., 22 Bom., 833

——— s. 91.

See WILL—CONSTRUCTION.
[I. L. R., 6 All., 583

——— s. 96—*Hindu Wills Act (XXI of 1870), ss. 2, 3—Lapsed legacy—Lapse of gift to testator's lineal descendant—Probate and Administration Act (V of 1881), s. 131*—A testator, by his will, dated the 22nd April 1878, gave a legacy of R5,000 to his son's daughter *J*, to be paid to her out of a certain sum owing to the testator by the Rajah of Bettia The testator died on the 2nd February 1881, and *J* in October 1879, the money due by the Rajah of Bettia was realized on the 7th December 1884 *J* left an only child *B*, who was born before the death of the testator *B* sued to recover the legacy left to her mother; the defence was that the legacy had lapsed *Held* that *J* was, in point of law, within the meaning of s 96 of the Succession Act, a person in existence at the death of the testator, because a lineal descendant of her's survived the testator. JITU LAL MAHATA *v.* BINDA BIBI I. L. R., 16 Calc., 549

——— s. 98.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.
[I. L. R., 8 Calc., 157, 637
I. L R. 15 Bom., 326, 652
I. L. R., 16 Bom., 492

See WILL—CONSTRUCTION.
[I. L. R, 4 Calc., 670

——— *Application of section—Vested interests—Semble*—S 98 of the Succession Act applies only to vested interests MASEYK *v.* FERGUSSON I L. R, 4 Calc., 304

——— ss. 98—103.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS

——— s 101

See PERPETUITIES, RULE AGAINST
[I L. R., 20 Bom., 511

——— ss 101, 102

See WILL—CONSTRUCTION
[I. L. R, 4 Calc., 304

——— s. 105.

See WILL—CONSTRUCTION
[I. L. R., 15 Mad., 448

SUCCESSION ACT (X OF 1865)—*continued.*

——— s. 106.

See WILL—CONSTRUCTION.
[I. L. R., 6 All., 583

——— s. 111.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SURVIVORSHIP.
[I. L. R., 23 Calc., 563
L. R., 23 I. A., 18

See WILL—CONSTRUCTION.
[3 C. W. N., 478

——— s. 114.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR IMMORAL CONSIDERATION I. L. R., 23 Mad., 313

——— s. 125.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . I. L. R., 24 Calc., 406

See WILL—CONSTRUCTION
[I. L. R., 22 Bom., 774

——— s. 128—*Legacy to person appointed executor—Rebuttal of presumption—Parol evidence—Hindu Wills Act (XXI of 1870), s. 2.*—The language of s. 128 of the Succession Act is peremptory and leaves no room for a presumption, and it is not left to the Court to decide whether the legacy is

[illegible]

SONO COOMAR GHOSE *v.* ADMINISTRATOR GENERAL OF BENGAL . I. L. R., 15 Calc., 83

——— s. 159.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.
[I. L. R., 20 Bom., 450

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[I. L. R., 15 Mad., 448

——— s. 179.

See PARTIES—PARTIES TO SUITS—EXECUTORS . I. L. R., 12 Bom., 621

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.
[I. L. R., 6 Bom., 460

——— ss. 179–187.

See CASES UNDER PROBATE—EFFECT OF PROBATE.

SUCCESSION ACT (X OF 1865)—*continued.*

——— s. 182.

See PROBATE—TO WHOM GRANTED.
[7 B. L. R., 563
I. L. R., 15 Mad., 360

——— s. 187.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
[23 W. R., 252

See PROBATE—JURISDICTION IN PROBATE CASES . I. L. R., 14 Calc., 37

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 14 Mad., 454

See VENDOR AND PURCHASER—TITLE.
[I. L. R., 15 Bom., 657

——— ss. 187, 188.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[I. L. R., 4 Calc., 360
I. L. R., 17 Calc., 272

——— s. 190

See RIGHT OF SUIT—INTESTACY.
[I. L. R., 18 Bom., 337

——— ss. 190, 191—*Intestate—Sale of property of intestate in execution of decree against some of his heirs—Title to sale-proceeds—Letters of administration.*—*S* sued some of the heirs to a person governed by the Succession Act, 1865, who died intestate, such heirs being in possession of a part of the estate of the deceased, for a debt due to him by the deceased, and obtained a decree against such persons. In execution of this decree, property

[illegible]

payment to her of such sale-proceeds. Thereupon *S* sued *R* for such sale-proceeds and to have the District Court's order directing payment thereof to her set aside. *Held* that, with reference to ss. 190 and 191 of the Succession Act, 1865, the decree obtained by *S* against persons who did not legally represent the estate of the deceased, and the proceedings taken against such persons in execution of such decree, gave S no title to the sale-proceeds which formed part of the estate of the deceased, and the suit was therefore not maintainable. SUKH NANDAN *v.* RENNICK . . I. L. R., 4 All., 193

——— ss. 190–213.

See CASES UNDER LETTERS OF ADMINISTRATION.

——— s. 224.

See ILLEGITIMACY . 11 B. L. R., Ap., 6

——— s. 232.

See PROBATE—AMENDMENT OF ERROR IN PROBATE . I. L. R., 4 Calc., 583

SUCCESSION ACT (X OF 1865) —*continued.*

——— ss. 234–261.

See CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

——— s. 235.

See JUDICIAL COMMISSIONER, ASSAM. [12 W. R., 424

——— s. 237—*Exemplification of will—Probate—Order to produce testamentary paper*—The testator died in Calcutta, leaving a will, whereof he appointed *A*, *B*, *C*, and *D* executors *D*, the mother of the testator, had carried on business in partnership with the testator in Calcutta, and a considerable portion of the testator's estate was in India *A* renounced probate, and the will was proved in England by *B* and *C*, who sent their agents in Calcutta an exemplification of the will for the purpose of obtaining a grant of probate or letters of administration to the estate in India. In an applica-

——— s. 239.

See RECEIVER. I. L. R., 17 Bom., 388

——— s. 240.

See LETTERS OF ADMINISTRATION. [I. L. R., 17 Bom., 689

——— s. 242.

See PROBATE—EFFECT OF PROBATE [8 B. L. R., 208

——— s. 244.

See PROBATE—JURISDICTION IN PROBATE CASES 4 C. L. R., 498

——— s. 255.

See EXECUTOR I. L. R., 21 Bom., 400

——— s. 256.

See PROBATE—ADMINISTRATION BONDS [I. L. R., 7 Calc., 84
3 Mad., Ap., 10
4 C. L. R., 498
I. L. R., 26 Calc., 407

——— ss. 256, 257.

See ADMINISTRATION BOND 6 N.-W., 62 [I. L. R., 10 All., 29

s. 257.

See ACT XL OF 1858, s. 21. [I. L. R., 5 All., 248

See GUARDIAN—LIABILITY OF GUARDIANS. [I. L. R., 5 All., 248

SUCCESSION ACT (X OF 1865) —*continued.*

——— s. 258—*Grant of letters of administration with will annexed—Practice*—Letters of administration with the will annexed may under s. 258 of the Succession Act, be granted after the expiration of seven clear days from the death of the testator. IN THE GOODS OF WILLSON [I. L. R., 1 Calc., 149

——— s. 261.

See PROBATE—APPLICATION FOR PROBATE, ETC. . . I. L. R., 19 Mad., 458

——— s. 263.

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R., 20 Calc., 245

See APPEAL—PROBATE [I. L. R., 27 Calc., 5

——— s. 264.

See REFERENCE TO HIGH COURT—CIVIL CASES . . I. L. R., 5 Calc., 756

——— s. 265.

See APPEAL—PROBATE . 2 C. L. R., 589

——— s. 268

See RIGHT OF SUIT—INTESTACY [I. L. R., 18 Bom., 337

——— s. 269

See EXECUTOR I. L. R., 1 All., 710

See LETTERS OF ADMINISTRATION. [I. L. R., 23 Calc., 579

——— s. 280.

See ADMINISTRATOR. [I. L. R., 17 Bom., 637

——— s. 282

See ADMINISTRATOR 8 Bom., O. C., 20

See ADMINISTRATOR-GENERAL'S ACT. [I. L. R., 25 Calc., 54

1. ——— — *Decree, Satisfaction of*

Succession Act does not interfere with that right NILKOMUL SHAW *v.* REED [12 B. L. R., 287 : 17 W. R., 513

2. ——— *Debt—Liability to pay calls on shares in company.*—A liability to pay calls is a debt within the meaning of s. 282 of the Succession Act ASIATIC BANKING COMPANY *v.* VIEGAS . . . 8 Bom., O. C., 20

3. *Judgment-creditor—Execution of decree—Right to assets in hands of Administrator-General—Administrator-General's Act (II of 1874), s. 35*—A decree for money was obtained against a person who afterwards died intestate. Letters of administration to his estate

SUCCESSION ACT (X OF 1865)—*concluded.*

decree satisfied out of the assets of the deceased, although those assets were not sufficient to pay in full all the claims made against the estate. REMFRY *v.* DE PENNING . I. L. R., 10 Calc., 929

———— s. 328.

See ADMINISTRATOR 8 Bom., O. C., 20

———— s. 331.

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF [I. L. R., 6 Bom., 452

See WILL—FORM OF WILL. [2 B. L. R., A. C., 79

1. ———— *Jains—"Hindu."*—The term "Hindu" in s. 331 of Act X of 1865 means and includes a "Jain," and consequently in matters of succession, Jains are not governed by that Act. BACHEBBI *v.* MAKHAN LAL . I. L. R., 3 All., 55

2 ———— *Native Christians—Hindu* ... rns the ... d since ... ot been ... cession. ... rve the ... on Act ... of the family who were born before the latter Act came into operation could not be deprived of the rights acquired by them under the Hindu law PONNUSAMI NADAN *v.* DORASAMI AYYAN [I. L. R., 2 Mad., 209

3. ———— *Native Christian—Application under Act XXVII of 1860 for certificate of administration*—Petitioner, a Native Christian, ...

4. ———— and s. 2—*Converts to Christianity from Hinduism—Inheritance—Evidence of custom of inheritance—Koli caste of* ... ance, is inadmissible. DAGREE *v.* PACOTTI SAN JAO . . . I. L. R., 19 Bom., 783

SUCCESSION CERTIFICATE ACT (VII OF 1889)

See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION, ETC.

See BOMBAY CIVIL COURTS ACT, s. 16. [I. L. R., 16 Bom., 277

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

———— Village Courts Act (Mad. Act I of 1889) —The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. RASIBI AMMAL *v.* OLAGA PADAYACHI [I. L. R., 21 Mad., 115

———— s. 4.

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY [I. L. R., 20 Calc., 755
I. L. R., 20 Bom., 76

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING. [I. L. R., 18 Calc., 86

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 16 Mad., 454

———— s. 9.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 19 Bom., 790

———— s. 17.

See COURT FEES ACT, 1870, s. 26. [I. L. R., 19 Bom., 145

———— s. 19.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [I. L. R., 17 Mad., 167

———— s. 26.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 17 Mad., 167

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R., 17 Bom., 230

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... of 1812 ... VIII ... edure ... [2 Bom., 2nd Ed., 106

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... SHAHA . . . . . 12 W. R., 60

SUDRAS.

See CASES UNDER HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—CEREMONIES.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED
[I. L. R., 1 Mad., 62
I. L. R., 3 Calc., 443
I. L. R., 6 Mad., 43
W. R., 1864, 133
8 Bom., A. C., 67
I. L. R., 6 Bom., 524
7 Bom., Ap., 26
12 Bom., 364
I. L. R., 10 Calc., 68

See CASES UNDER HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP
[I. L. R., 4 Bom., 37
I. L. R., 18 Calc., 151
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See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—ILLEGITIMATE CHILDREN . . 3 B. L. R., P. C., 1
[13 Moore's I. A., 141
2 B. L. R., P. C., 15
5 Mad., 405
I. L. R., 8 Mad., 325, 557
I. L. R., 1 Mad., 306

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.
[3 B. L. R., P. C., 1
13 Moore's I. A., 141
I. L. R., 1 Calc., 1
I. L. R., 15 Calc., 708

See HINDU LAW—PARTITION—RIGHT TO PARTITION—ILLEGITIMATE CHILDREN
[I. L. R., 12 Mad., 401

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See ABETMENT . 1 Agra, Cr., 21
[3 N. W., 316

See ENGLISH LAW—SUICIDE
[1 W. R., P. C., 14: 9 Moore's I. A., 387

——— Attempt to commit suicide—*Penal Code, s. 309—Intention. Locus pœnitentiæ*—*R*, with the intention of committing suicide by throwing herself into a well, ran to the well, where she was arrested. She was convicted under s. 309 of the Penal Code of having attempted to commit suicide. *Held* that the conviction was illegal. QUEEN-EMPRESS *v.* RAMAKKA. I. L. R., 8 Mad., 5

SUIT

See BENGAL RENT ACT, 1869, s. 101
[6 B. L. R., 569

See BENGAL RENT ACT, 1869, s. 102
[19 W. R., 307
23 W. R., 207

SUIT—*continued.*

See BROACH ENCUMBERED ESTATES ACT, s. 19. . I. L. R., 5 Bom., 448

See COURT FEES ACT, 1870, s. 11.
[I. L. R., 24 Calc., 173

See COURT OF WARDS ACT, 1879, s. 20.
[I. L. R., 18 Calc., 500

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT . I. L. R., 18 Calc., 635
[I. L. R., 12 All., 392

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[I. L. R., 1 All., 97

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) I. L. R., 1 Bom., 253
[I. L. R., 22 Calc., 943

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—PERIOD FROM WHICH LIMITATION RUNS—WHERE PREVIOUS APPLICATION HAS BEEN MADE.
[I. L. R., 2 Calc., 336

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[I. L. R., 16 Bom., 731

See RES JUDICATA—ADJUDICATIONS
[I. L. R., 3 Calc., 340

——— Abatement of—

See ABATEMENT OF SUIT.

——— Change in form of—

See CASES UNDER PLAINT—AMENDMENT OF PLAINT

See VARIANCE BETWEEN PLEADING AND PROOF

——— for declaration of right to officiate in hereditary office.

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT

——— *for land.*

See CASES UNDER JURISDICTION—SUITS FOR LAND

——— for money charged on immoveable property.

See CASES UNDER LIMITATION ACT, 1877, ART. 132

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES

——— for share of fees—

See CASES UNDER JURISDICTION OF CIVIL COURT—FEES AND COLLECTIONS AT SHRINES.

SUIT—*continued*

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT.

——— **for turn of worship of idol.**

See LIMITATION ACT, 1877, ART. 131.
[6 B. L. R., 352 : 15 W. R., 29
I. L. R., 4 Calc., 683
I. L. R., 8 Calc., 807 : 10 C. L. R., 489

Institution of—

See CASES UNDER LIMITATION ACT 1877, s. 4

——— **Restoration of—**

See CASES UNDER CIVIL PROCEDURE CODE, ss. 98, 99, and 100

— **Revival of—**

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 5 Calc. 139

See CASES UNDER LIMITATION ACT, 1877, ARTS. 171, 171A, 171B.

See LIMITATION ACT, 1877, ART 178.
[I. L. R., 6 Calc., 60
I. L. R., 8 Calc., 420
I. L. R., 5 Calc., 139
I. L. R., 5 Bom., 29

See PARTIES—SUBSTITUTION OF PARTIES.

1. ——— **Notice of revival.**—Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. HURO MOHUN MOOKERJEE *v.* MOHENDRONATH GHOSE . 16 W. R., 135

2. ——— **Right to revive suit**—*Act LIII of 1860, s. 2—Civil Procedure Code, 1859, s. 378.*—S. 2, Act LIII of 1860, referred to appeals and also to suits, and as the suit of the special appellant, which had been decreed in the Court of first instance, was dismissed by the lower Appellate Court, the special appellant was held entitled to a revival of his suit. S. 378, Act VIII of 1859, refers to applications for review of judgment, but this was an application for revival of the suit under s. 2, Act LIII of 1860. BUNOSHEEDUR MUNDUL *v.* PUDDO LOCHUN ROY . W. R., F. B., 11
[1 Ind. Jur., O. S., 5 : Marsh., 38 : 1 Hay, 90

3. ——— **Revival of suit by successor of Judge**—*Ex-parte decree—Act X of 1859, s. 58.*—Where defendants against whom an *ex-parte* decree has been passed by a Collector applied to his successor under s. 58, Act X of 1859, for a revival of the suit showing good and sufficient cause for their non-appearance, and that there had been a failure of justice the successor was competent to alter or rescind his predecessor's decree according to the justice of the case. BROHOO MOHINEE DOSSEE *v.* KASHEE NATH ROY CHOWDHRY. KASHEE NATH ROY CHOWDHRY *v.* SHABITREE SOONDUREE DOSSEE
[10 W. R., 156

4. ——— **Effect of revival**—*Act X of 1859, s. 58.*—The revival of a suit under s. 58, Act X of 1859, did not re-open the case as regards all the defendants, but only as regards the party who had applied to have his particular case revived and heard on the merits. BROJONATH SURMAH CHUCKERBUTTY *v.* ANUND MOYEE DEBIA CHOWDHRAIN
[7 W. R., 237

SUIT—*concluded.*

5. ——— **Form of order for revival**—*Abatement—Civil Procedure Code (Act XIV of 1882), ss. 365, 366, 371.*—The plaintiff died on the [illegible] a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (XIV of 1882) and of the Limitation Act XV of 1877, it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement. FULVAHU *v.* GOCULDAS VALLABHDAS . . I. L. R., 9 Bom., 275

6. ——— **Mode of revival**—*Revival by Bill—Civil Procedure Code, 1877.*—There is nothing in the Civil Procedure Code to prevent a suit being revived as before it was passed by Bill, if the simpler mode of proceeding is for any reason not available. ATTERMONY DOSSEE *v.* HURRY DOSS DUTT
[I. L. R., 7 Calc., 74 : 9 C. L. R., 357

— **Title of—**

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[2 Ind. Jur., N. S., 245

See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 23 Calc., 270

——— **Withdrawal of—**

See CASES UNDER WITHDRAWAL OF SUIT

SUITS VALUATION ACT (VII OF 1887).

See CASES UNDER VALUATION OF SUITS

——— **s. 8**

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Mad., 58

——— **s. 11.**

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.
[I. L. R., 18 Mad., 419

SUMMARY DECISION.

See CASES UNDER LIMITATION ACT, 1877, ART. 178 (1859, s. 22).

SUMMARY ORDER.

——— Suit to set aside—

See CASES UNDER LIMITATION ACT, 1877, ART. 13 (1871, ART. 15).

SUMMARY PROCEDURE

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R., 15 Mad., 83

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[I. L. R., 20 Calc., 351

See CASES UNDER NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
[I. L. R., 3 Calc., 539

SUMMARY SUIT.

——— Cross claim in—

See COMPENSATION—CIVIL CASES
[I. L. R., 18 Bom., 717

SUMMARY TRIAL.

See CATTLE TRESPASS ACT, s. 20
[I. L. R., 23 Calc., 248

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE.
[I. L. R., 6 Mad., 396

1. ——— **Requisites for legal conviction**—*Criminal Procedure Code, 1872, ss. 222-230—Procedure.*—In summary cases under Ch XVIII, ss. 222-230, of the Code of Criminal Procedure, 1872, the formalities provided by that chapter should be most strictly observed. If they are not, a conviction will be set aside QUEEN *v.* JOHRIE SINGH . . . . 22 W R., Cr., 28

2. ——— *Criminal Procedure Code, 1872, s. 222—Procedure.*—In a case tried under the summary procedure authorized by s. 222 of the Criminal Procedure Code, 1872, it must

3. ——— **Test of summary trial**—*Criminal Procedure Code, 1872, s 222—Care in*

4. ——— *Test of summary case—Criminal Procedure Code, 1872, s. 222—Jurisdiction to try summarily.*—It is the nature of the complaint which should determine whether a case should be tried summarily under s. 222 of the Code of Criminal Procedure. Where the acts complained of amount to an offence which a Magistrate cannot try summarily, he is not competent to hold a summary trial. *Dwarkanath Mozoomdar v. Nabe Das, 21 W R., 829,* and *Chunder Shekur Thakoor v. Nitaloo, 2 W. R., 29,* followed. IN THE MATTER OF BEHUTOOLLA *v.* NAJIM SHEIKH
[2 C. L. R., 374

5. ——— *Criminal Procedure Code, 1872, s. 222—Criterion for testing.*—Whether a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e g*, of the worth of the property which the accused is charged with having stolen) after evidence has been recorded · and such estimate cannot retrospectively warrant a mode of trial which was originally illegal RAM CHUNDER CHATTERJEE *v.* KANYE LAHA 25 W. R., Cr, 19

6. ——— *Criminal Procedure Code, s. 260—Complaint including charge not summarily triable—Summary jurisdiction not necessarily ousted thereby.*—The mere circumstance of a complaint charging an accused person

affords sufficient grounds for a summary trial or

QUEEN-EMPRESS *v.* JAGJIWAN
[I. L R., 10 All., 55

7 ——— *Value stolen in*

8 ——— **Matters necessary to be stated in the record of a summary trial**—*Criminal Procedure Code (1882), ss. 260, 263—Offence under Gambling Act (III of 1867), ss 3 and 4.*—Where a Magistrate invested with powers

SUMMARY TRIAL—*continued.*

under s. 260 of the Code of Criminal Procedure is trying a case summarily, it is desirable that he should set out under the column reserved for that purpose so

The record of a summary trial contained in the

no reason to suppose they would find any one. I convict Mukundi of keeping a common gaming-house—s. 4, Gambling Act. I convict the other six defendants of gaming in a common gaming-house—s. 3, Gambling Act" *Held* that this entry, though it should have been more explicit, was a sufficient compliance with the requirements of the law. QUEEN-EMPRESS *v.* MUKUNDI LAL

[I. L. R., 21 All., 189

9. ———— **Case instituted by Magistrate**—*Criminal Procedure Code, 1872, s. 222—Institution by Magistrate without complaint.*—Where an accused person had, at the instance of the Magistrate, who had come across him while out walking one morning, encroaching on an embankment, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment,—*Held* that, in a case of this kind

but

who

had erred seriously in dealing with the case summarily and sentencing of the accused to imprisonment. IN THE MATTER OF THE PETITION OF PRAN NATH SHAHA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE 25 W. R., Cr., 69

10. ———— **Criminal trespass and mischief**—*Magistrate, Jurisdiction of—Code of Criminal Procedure (Act X of 1882), s. 260.*—A person may be tried summarily for criminal trespass and mischief unless there is a *bonâ fide* claim of right depriving the Magistrate of jurisdiction. *Shakur Mahomed v. Chunder Mohun Sha, 21 W. R., Cr., 38*, disapproved. *Issur Chunder Mundle v. Rohim Sheikh, 25 W. R., Cr., 65*, distinguished. GAMIRULLAH SARKAR *v.* ABDUL SHEIKH

[I. L. R., 10 Calc., 408

11. ———— **Mischief combined with theft**—*Criminal Procedure Code, 1872, s. 222.*—A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, s. 222. QUEEN *v.* RAMAOTAR PANRE

[25 W. R., Cr., 5

12. ———— **Offence under Act XXI of 1856**—*Criminal Procedure Code, 1872, s. 222 and s. 148.—Illegal possession of opium.*—On a conviction, under Act XXI of 1856, of having in possession opium not supplied from Government stores, the Magistrate tried the case summarily under s. 222, Code of Criminal Procedure, and passed a sentence of

See IN THE MATTER OF THE PETITION OF KHETTER MOHUN CHOWRUNGHEE

[23 W. R., Cr., 43

13. ———— *Criminal Procedure Code, s. 260—Act XIII of 1859, s. 2.*—Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* INDARJIT

[I. L. R., 11 All., 262

14. ———— *Illegal possession of opium—Offence punishable by fine and confiscation.*—An offence under s. 49 of Act XXI of 1856 can be tried summarily under s. 222 of the Criminal Procedure Code, the confiscation provided by s. 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence. EMPRESS *v.* BAIDANATH DASS

[I. L. R., 3 Calc., 366: 1 C. L. R., 442

15. ———— **Criminal intimidation**—*Criminal Procedure Code, 1872, s. 222.*—Where a head constable of police of many years' service was charged with criminal intimidation with a view to

Held that the case ought not to have been tried summarily. SUBRAMANYA *v.* QUEEN

[I. L. R., 6 Mad., 396

16. ———— **Offences one triable summarily and the other not**—*Criminal Procedure Code, 1882, s. 260—Omission of charge so as*

MAHTON *v.* KOYLASH MAHTON

[I. L. R., 11 Calc., 236

17. ———— **Alteration of charge to make it triable summarily**—*Criminal Procedure Code, 1872, ss. 222-230—Power of Magistrate.*

SUMMARY TRIAL—*continued.*

a charge is plainly and directly one of those specified in s. 222. CHUNDER SHEKHUR THAKOOR *v.* NITALOO [22 W. R., Cr., 29

HARAN SHEIKH *v.* RAMDHUN BISWAS [24 W. R., Cr., 21

EMARAL SHEIKH *v.* MOHAMMADI SHEIKH [24 W. R., Cr, 48

See EMPRESS *v* ABDOOL KARIM [I. L. R., 4 Calc., 18

18. ——— *Alteration of charge for purpose of trying case summarily—Practice condemned.*—The action of Magistrates in not trying accused persons for offences which the acts attributed to them constitute, but in trying the case as one under s 143, Penal Code, for the purposes of holding the trial under summary procedure is highly improper. SHEO BHUNJUN SINGH *v* MOSAWI [4 C. W. N., 795

19. ——— *Alteration of charge of dacoity to one of unlawful assembly.*—In a case where the charge was originally one of dacoity, but in the course of the proceedings that charge was ignored and the accused put on their defence on a charge of being members of an unlawful assembly, and the proceedings continued in a summary way,—*Held* that, the original charge being one of dacoity, the Magistrate had no jurisdiction to alter it and try the case summarily. DWARKANATH MAZOOMDAR *v* LALU DASS . 21 W. R., 89

20. ——— *Rioting altered to charge of mischief.*—Where a charge of rioting was tried summarily by the Magistrate as one of

reference
interests of

... W. R., Cr., 19

21. ——— **Alteration of assault on public servant to one of assault**—*Criminal*

been convicted under s 353 or under s 342, and (2) that the Magistrate had no power to convict of the lesser offence, and so give himself jurisdiction to try the case summarily. *Held*, in concurrence with the Sessions Judge, that the accused ought to have been tried under s. 353: the Magistrate's summary proceedings were accordingly set aside and a fresh trial directed. QUEEN *v.* BANEE MADHUB DOSS . . . . . 23 W. R., Cr., 3

22 ——— **Alteration of charge from lurking house trespass or house-breaking at night to receiving stolen property**—*Magistrate, Jurisdiction of—Penal Code, ss. 411, 457—Criminal Procedure Code, 1872, ss. 141, 222—*

without reference to the procedure which, when he has determined the offence with which he will charge the accused, it will be competent to him to adopt. *Held*, therefore, when a person was brought before a Magistrate by the police, charged with an offence under s 457 of the Penal Code, an offence not triable in a summary way, that the Magistrate was competent to alter the charge to one under s 411, and to try the accused summarily under the provisions of s 223 of Act X of 1872. IN THE MATTER OF MEWA . . . . . 6 N. W., 254

23. ——— **Appeal from summary trial**—*Insufficiency of evidence—Criminal Procedure Code, 1872, ss. 222 to 230*—If on appeal from a summary trial under Ch. XVIII of the Criminal Procedure Code (Act X of 1872), the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him QUEEN *v.* KHERAJ MULLAH [11 B L R, 33

24. ——— **Magistrate, Power of, to**

Magistrate, having perused the petition of the complainant and examined him on oath, issued summonses against the persons named under those sections. The complainant was not himself an eye-

a fresh summons under s 447 only, and then proceeded to try the case summarily and convicted one of the accused. It was contended that he had no power so to try and dispose of the case *Held* that

jurisdiction of the Magistrate, unless the facts of

SUMMARY TRIAL—*concluded*

which he really complains disclose such offences. GOLAP PANDEY *v.* BODDAM [I. L. R., 16 Calc., 715

25. ——————— *Criminal Procedure Code (Act V of 1898), s. 260—Summary procedure under Penal Code, s. 323, after enquiry into the graver charges under ss. 147 and 324 not triable summarily.*—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss 147 and 324 of the Indian Penal Code; but after hearing evidence and being of opinion that only an offence under s 323 of the Indian Penal Code had been made out, he proceeded to deal with the case summarily. *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did. [illegible] part of a [illegible] case summa[illegible] where a Ma[illegible] terests of justice *Empress v. Abdool Karim, I. L. R., 4 Calc., 18*, distinguished QUEEN-EMPRESS *v.* RANGAMANI . . I. L. R., 22 Mad., 459

SUMMING UP EVIDENCE.

See ASSESSORS 7 B. L. R., 63, 67 note
[I. L. R. 9 Calc., 875
4 Mad., Ap., 39

See CASES UNDER CHARGE TO JURY

SUMMONS.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES . I. L. R., 19 Calc., 52

See PRODUCTION OF DOCUMENTS.
[W. R., 1864, 164

See CASES UNDER WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

See CASES UNDER WITNESS—CRIMINAL CASES—SUMMONING WITNESSES

——— Application for—

See LIMITATION ACT, 1877, ART 178
[I. L. R., 3 Calc., 312
I. L. R., 5 Calc., 120

——— in chambers.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS . I. L. R., 19 Bom., 88

——— Issue of—

See PARDANASHIN WOMEN
[I. L. R., 21 Calc., 588

——— Leave to amend—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY . I. L. R., 2 Bom., 91

SUMMONS—*continued.*

not served.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 14 Bom., 267

See WITHDRAWAL OF SUIT
[I. L. R., 15 Bom., 160

——— Refusal to grant receipt for—

See PENAL CODE, S. 173
[5 Bom., Cr., 34
I. L. R., 3 Calc., 621
I. L. R., 20 Calc., 358

——— to attend taxation.

See COSTS—TAXATION OF COSTS.
[7 B. L. R., Ap., 50

See LIMITATION ACT, 1877, S 4.
[I. L. R., 20 Calc., 809

1. ——— Issue of summons—*Issue after period of limitation.*—[illegible]

2. ——— Issue of fresh summons—*Return of old summons*—A fresh writ of summons will not be granted till the old one is returned into Court ISSURCHUNDER SEIN *v.* ASHOTOSH CHATTERJEE . . . 1 Ind. Jur., N. S., 233

3. ——— Application for fresh summons—*Practice*—An application for a fresh summons to appear, etc., should be issued on petition [illegible]

[illegible]

4. ——— Grant of second summons—*Discretion of Judge—Practice—Rule 12 of High Court Rules, 1st May 1875—Laches.*—A Judge has, under rule 12 of the Rules of 1st May 1875, discretion as to granting a second summons, and is bound to inquire into the circumstances under which it is applied for; and when there has been great and unexplained laches, he should refuse it. Unless such discretion is clearly shown to have been improperly exercised, the Court will not interfere on appeal; but [illegible]

[15 B. L. R., Ap., 12

5. ——— Mistake in summons—*Amendment of summons at hearing—Practice*—The defendant was manager of a joint Hindu family carrying on business in Bombay, Madras, and other places. In a suit in the High Court of Bombay against him as such manager, a decree was passed on the 11th

SUMMONS—*concluded.*

April 1896, in execution of which on the same day certain property, in which the joint family was interested, was attached On the 9th April 1896, however, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s 9 of the Insolvent Act. On the 6th May 1896 the Official Assignee, Bombay, took out a summons to have [illegible]

hearing by substituting the name of the Official Assignee of Madras and disposed of on that basis SARDAMAL JAGONATH *v.* ARANVAYAL SABHAPATHY MOODLIAR . . . I. L. R., 21 Bom., 205

SUMMONS, SERVICE OF—

See SOLDIER . I. L. R., 11 Mad., 475

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622 [I. L. R., 18 Bom , 606

See TRANSFER OF PROPERTY ACT, s. 132 [I. L. R., 21 Bom., 60

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 5 Bom., Cr., 20 [3 Mad., Ap , 5 6 Mad., Ap., 29

———— Date of service.

See LIMITATION ACT, 1877, ART 159. [I. L. R., 23 Calc., 573

———— Fine for avoiding—

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES 1 B. L. R., A. C., 186

———— on wrong person.

See COSTS—SPECIAL CASES—SERVICE OF SUMMONS BY MISTAKE [I. L. R., 4 Bom., 619

[illegible]

be [illegible]

th [illegible]

fact of the plaintiff obtaining an *ex-parte* decree, it is not to be presumed that the service of summons was proved To satisfy a Court of appeal if the objection is raised, there must be proof that the service of summons was actually made. RAM LOCHUN SOOR *v.* NITTYA KALLEE DEBIA . 12 W. R., 211

2. ———— *Onus probandi—Civil Procedure Code, 1859, s 119* - Under Act VIII of 1859, s. 119, the onus of proving non-service of summons was on the party claiming the benefit of that section. TORAB ALI *v.* CHOORAMUN SINGH CHOWDHRY . . . 24 W. R., 282

3. ———— Omission to serve summons—*Appearance of defendant* —Where a summons has not been issued to a defendant, the defect is cured by his appearance KHALUT CHUNDER GHOSE *v.* SARODA SOONDERY DOSSEE Bourke, O. C., 244

SUMMONS, SERVICE OF—*continued.*

4. ———— Mode of service—*Act XIX of 1853, s 26, Suit under—Personal service.*—To maintain an action under Act XIX of 1853, s 26, it was necessary that the summons to attend should have been personally delivered. DHUNPUT SING *v.* PREM BIBEE . . . . 24 W. R., 72

5. ———— *Substituted service—Civil Procedure Code, 1859, s. 57—Application to set aside ex-parte decree.*—Substituted service if duly effected under the provisions of the law is as valid as personal service, and therefore, where substituted service had been effected under s. 57 of Act VIII of 1859, an *ex-parte* judgment would not be set aside on an allegation of no notice, and of good defence on the merits KISSUR CHUND *v.* BHOOBUNESSUR CHUNDER [Bourke, O. C., 25: Cor., 151

6 ———— *Practice—Setting aside ex-parte decree—Civil Procedure Code, 1877, ss. 82, 84.*—Where substituted service of the summons is ordered [illegible]

will set aside the decree. ALLY DEBANEE *v.* HYDER HOOSEIN . . . I. L. R., 2 Bom., 449

7. ———— *Procedure in case of non-service* —Every summons not actually served on a defendant or respondent or his recognized agent must be stuck up on the house in which the defendant or respondent is dwelling If the defendant or respondent cannot be found, the summons should be returned to the Court and an order obtained from the Court as to the mode of service GOPAUL DOSS *v.* GREEDHAREE DOSS . 6 W. R., 13

8. ———— *Civil Procedure Code (Act XIV of 1882), ss 78, 80, 82—Substituted service—Duty of process-server* —Mere temporary absence of a person to be served does not justify the process server in fixing the summons to a door. It is the duty of the process-server to take pains to find out the person to be served in order that, if possible, personal service may be effected. SUBRAMANIA PILLAI *v.* SUBRAMANIA AYYAR [I. L. R., 21 Mad., 419

9. ———— *Service of summons on minors carrying on partnership business with others—Affixing summons on house in which business is carried on—Civil Procedure Code (Act XIV of 1882), ss 74, 76, and 443* —In a suit for the enforcement of an equitable mortgage of certain property belonging to a partnership business, brought against certain minors and other persons who con- [illegible]

[illegible] the house in which the business was carried on. *Held* that there was no service of summons either personal or substituted upon the minors either under

SUMMONS, SERVICE OF—*continued.*

s. 74 or under s 76 of the Code of Civil Procedure, even assuming that those sections can apply to a case in which some of the defendants who were interested in the partnership or business are minors. *Held* also that ss. 74 and 76 of the Code of Civil Procedure are controlled by s. 443 of the said Code. JATINDRA MOHAN PODDAR v. SRINATH ROY

[I. L. R., 26 Calc., 267
3 C. W. N., 261

[illegible]

one of the modes of service provided in lieu of personal service, but it is necessary that the defendant should be residing in the house in such a manner as to make it probable that knowledge of the service of the summons will reach him. There may be a dwelling sufficient to give jurisdiction, and yet not the kind of dwelling necessary to make a good service. ANANTHA NARAYANA v. PERIYANA KONE

[5 Mad., 101

It should be shown he was dwelling in the house, and that he could not after diligent search be found. KHUDEERUN LALL v. CHUTTERDHAREE LALL

[21 W. R., 242

11. ———— *House service—Civil Procedure Code (1882), ss 80-82—Practice.*—Where a defendant is temporarily absent from home, and is not represented at his house by an agent or male member of his family, a Judge is not justified in treating the fixing of a summons to his door as due service. The summons should be again sent to the defendant's house to be served upon him when the inquiries made show that he is likely to be at home and to be found there. The Civil Procedure Code (Act XIV of 1882) in the matter of the service of a summons does not take into account the female members of a defendant's family, and does not rely upon the presumption that they will take steps to inform the defendant of what takes place in his absence. BHOMSHETTI JINAPPASHETTI v. UMABAI

[I. L. R , 21 Bom., 223

12. ———— *Civil Procedure Code (Act XIV of 1882), s 80—Ex-parte decree—Substituted service of summons.*—A decree was passed *ex-parte* against defendants on whom the summons was served by affixing it to their house. The defendants who had applied unsuccessfully under Civil Procedure Code, s. 101, to be heard in answer to the suit, now preferred a petition under s. 108 that the decree be set aside. This application was dismissed On an appeal by one of the defendants,—*Held*, as it appeared from the serving officer's return, that, according to the information given to him, there was no prospect of his being able to serve the defendant personally within a reasonable time, that he was justified in affixing the summons to the door of the house SANKARALINGA MUDALI v. RATNASABHAPATI MUDALI . . . I. L. R., 21 Mad., 324

13. ———— *Service on railway company.*—For the purposes of summons a railway company must be deemed to dwell at its principal office. HANLON v. INDIA BRANCH RAILWAY COMPANY . . . . 1 Hyde, 197

14. ———— *Service in foreign territory—Act VIII of 1859, ss. 60 and 66.*—A summons cannot be sent by post to any place to [illegible]

S. C. CASSIM AZIM DOOPLAY v. CASSIM MAHOMED BAROOCHA . . . . 10 W. R., 348

15. ———— *Service by post—Return through the post of packet containing the summons endorsed "refused"—Civil Procedure Code (1882), s. 82.*—A Small Cause Court having forwarded the summons to the defendant in a registered packet through the post office, the packet was returned endorsed "refused;" the Small Cause Court held the service of the summons to be good service and passed an *ex-parte* decree against the defendant. *Held* that the delivery of the summons by the post to a person who was not shown to be the defendant was not good service. JAGANNATH BRAKHBHAU v. SASSOON I. L. R., 18 Bom., 606

16. ———— Where a summons was sent by the Sheriff by registered letter to the [illegible]

held a sufficient service of the summons ABDUL ALI v. CORUNJEE JAFFERJEE . 1 C. W. N., 56

17. ———— *Affixing summons to place of business—Civil Procedure Code, 1859, s. 55 — Quære*—Whether the affixing of a summons to the outer door of the place of business of a defendant was good service upon him under s 55 of the Code of Civil Procedure. CHANBASAPPA BIN SANGAPPA v. MAINABA BIN MAHADSHET

[7 Bom , A. C., 138

18. ———— *Civil Procedure Code, 1877, s 87, cl. (a)—Non-resident—Recognized agent.*—The term "non-resident" in s 87 cl. (a), of the Code of Civil Procedure (Act X of 1877) covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term: thus, where a Marwadi had resided for forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was held that he was "non resident" within the local limits of [illegible]

19. ———— *Service on agent,—Suit to obtain relief respecting immoveable property—Civil Procedure Code (Act XIV of 1882), ss. 16 and 77.*—In a suit for foreclosure or sale of immoveable property, it appeared that the mortgagee

SUMMONS, SERVICE OF—*continued.*

had conveyed the mortgaged premises to trustees. The summons to one of the trustees was personally

20. ———— *Service of sum-*

to service of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work, that is, business either actually itself carried on by the agent or manager, or forming part of the ... trans- ... s been ... e to be construed together, and are intended to carry out the scheme of relief which rests upon the idea that

guidance. A mere servant employed to carry out orders or to execute a particular commission, or a

not due service. *G* in particular instances drew hundis on the firm of *G S* which that firm duly accepted and paid. *Held* that he might reasonably

become effectual by reason of the fact of service being subsequently notified to the parties really interested as defendants. *Semble*—Service duly effected under s. 76 is effectual without reference to the circumstances of its being or not being com-

SUMMONS, SERVICE OF—*continued.*

municated to the real defendants. GOKULDAS *v.* GANESHLAL . . **I. L. R., 4 Bom., 416**

21. ———— *Agent to whom ship is consigned—Matters connected with ship.*—Service of a summons on an agent to whom a ship is consigned is good service on the owner in respect of matters connected with such ship. RAJARAM GOVINDRAM *v.* BROWN . **7 Bom., O. C., 97**

22. ———— *Civil Procedure Code, 1859, s. 17—Recognized agent—Carrying*

freight for the *Rialto*, signing the shipping orders in their own name as agents for the master of the *Rialto*. Messrs *R S & Co.* held no other authority from the owner of the *Rialto* than that contained in the above letter. *Held* that Messrs *R S & Co.*

cl. 2, of the Code of Civil Procedure, to accept service of a summons on his behalf in respect of a

circumstances, be regarded as carrying on business in the name of the owners of such ship. RATANSI PANCHAM *v.* SAUNDERS . **8 Bom., O. C., 159**

23. ———— *Civil Procedure Code, 1859, s. 49—Agent.*—Persons merely looking ... ler ... 33

24. ———— *Service on co-*

DOGARE *v.* SIBNARAIN MUNDLE . **1 Hyde, 87**

25. ———— *Services on partner for co-partner—Agent—Act VIII of 1859, s. 17, cl. 2.*—Service of summons on one partner for his co-partner is a good service. *Luchmeput Dogare v. Sibnarain Mundle, 1 Hyde, 97*, dissented from. RAMCHANDRA BOSE *v.* SNEADE **[7 B. L. R., Ap., 58**

26. ———— *Service on partner for co-partner.*—Service of summons on one partner for his co-partner is not sufficient service unless the

SUMMONS, SERVICE OF—*continued.*

service is effected at the place where the partnership business is carried on. KUSTOOR MULL *v.* JOKEERAM [11 B. L. R., Ap., 28

27. ———————— *Brothers living in the same house.*—Where an *ex-parte* decree had been given against three brothers, and it was shown that there had been only one summons, and that the serving officer had merely posted the summons on the door of one of them without attempting to serve it personally on him,—*Held* that the notice had not been properly served even on the one brother, still less on the two others; and that the defendants were entitled to have the suit restored on their application. SHIBOO ROY *v.* KASHEE ROY . 25 W. R., 394

[illegible]

Held that the return was insufficient, and that the word "dwelling-house" must be expressly mentioned. BUDDOO BABOO *v.* LAMBODAR MULLICK [1 Hyde, 132

29. ———————— *Substituted service—Defendant not found and not heard of for some years.*—In an application for substituted service it was shown that diligent inquiries and attempts to find the defendant had proved futile; that at the house where the defendant had last ordinarily resided his relatives informed the serving officer that the defendant had left the house some years ago, and they did not know where he was re- [illegible]

29 W. R. (Eng.), 599, and ordered substituted [illegible]

30. ———————— *Substituted service—Person not found, but serving officer saying he knew where he was—Civil Procedure Code, 1882, s. 80.*—Where the return of the peon of the service of a summons upon a witness was in these terms "The remaining witness No. 1 being in Calcutta, the copy of summons in his name has been hung upon the mat wall of the kutchery house of the defendant's residence,"—*Held* that the circumstance that the peon could not find the witness, when he says he knew where the witness was, is not sufficient *per se* [illegible]

[5 C. W. N., 507

31. ———————— *Issue of summons—Summons transmitted to local Court for service—Return of local Court when sufficient evidence of service—Form of return to be made by Civil Court.*—Where the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house, the Court must decide whether the summons has been duly served by such affixing or not, and if it decides in the negative, a new summons must be issued, or substituted service directed. Before the Court can decide in favour of the sufficiency of this mode of service, it must be satisfied that the defendant is keeping out of the way for the purpose of avoiding service. Where a summons has been transmitted by one Court to another for service by the latter, the transmitting Court is not bound, in every case, to satisfy itself that the law as to service has been strictly followed. The presumption in favour of the proceedings of a Court of justice is that everything has been duly performed, and if the return made by the Court serving the summons states that the summons has been duly effected, that presumption must prevail, unless the return discloses some patent irregularity or clear divergence from the law. As a rule, on a return from a competent Court that summons has been duly effected, it may be presumed that either personal service has been effected, or substituted service under s. 82, or under ss. 80 and 82 combined, of the Civil Procedure Code (Act XIV of 1882). [illegible]

the process stating that the summons has been affixed [illegible]

sanctioned after inquiry by the local Court, as required by s. 82. All that appeared to have been done was the affixing prescribed by s. 80, which was insufficient until confirmed under s. 82. *Reg. v. Tukaya, I. L. R., 1 Bom., 214.* NUSUR MAHOMED *v.* KAZBAI [I. L. R., 10 Bom., 202

32. ———————— *Summons transmitted to local Court for service—Question of sufficiency or otherwise of service of summons—Civil Procedure Code (1882), s. 85—Practice.*—When a summons is issued by one Court to persons resident outside its jurisdiction, and is sent to another Court for service to be effected, it is for the Court from which the summons originally issued to determine whether the service of summons by the Court to [illegible] ...Bom., 202, [illegible] ...lc., 889

33. ———— Sufficiency of service—*Evidence of service—Substituted service—Evidence of serving peon.*—The evidence of the serving peon that he endeavoured to serve the summons on the

SUMMONS, SERVICE OF—*continued*

defendants, and that, not being able to serve them

34. ———————— *Evidence of service—Peon's return of service*—A Collectorate peon's return of service is not admissible as legal evidence. MOINOOLLAH *v.* GOLUCK MONEE CHOWDRAIN . . . . . 15 W. R., 270

35. ———————— *Army Act of 1881, ss. 144, 151—Civil Procedure Code, s 468.*—In a suit against a soldier to recover a debt not amounting to £30 *Semble*—The Commanding Officer of the defendant is bound to cause the summons of the Small Cause Court to be served on him. MAHOMED *v.* AGGAS . I. L. R., 10 Mad., 319

37. ———————— *Army Act, 1881,*

Commissary of Ordnance returned the summons unserved and referred to s 144 of the Army Act, 1881, as his reason for such action *Held* that the Commissary of Ordnance was bound to serve the summons, under s 468 of the Code of Civil Procedure, although the defendant might be entitled to the privilege given by s 144 of the Army Act, 1881 ABRAHAM *v.* HOLMES I. L. R., 11 Mad., 475

38. ———————— *Return by Nazir—Proof of service of notice*—A return by the Nazir to the effect that the peon swears that a notice has been served is insufficient in law to prove the service without the deposition on oath of the serving peon taken before a competent authority. RAJ KISHORE DUTT *v.* BYDONATH SHAHA . . 12 W. R., 365

39. ———————— *Nazir's report*—A Nazir's report of service of summons or of issue of proclamation is not legal evidence on which to punish a witness failing to attend a Court of justice when duly summoned IN THE MATTER OF THE PETITION OF NILKANT BHUTTACHARJEE

[W. R., 1864, Mis., 9

OKHOY CHUNDER DUTT *v.* ERSKINE

[3 W. R., Mis., 11

SREENATH THAKOOR *v.* WATSON

[4 W. R., Mis., 4

RAM SOONDUR CHUCKERBUTTY *v.* KALEE KOMUL DUTT . . . . 8 W. R., Act X, 92

KOONDUN LALL *v.* NOOR ALI . 10 W. R., 3

See MEAH KHAN *v* NARAIN CHUNDER CHOWDHRY . . . . 18 W. R., 197

40. ———————— *Civil Procedure Code, 1882, s 80—Affidavit of service of summons—Practice*—An affidavit in support of service of a writ of summons under s. 80 of the Civil Procedure Code should
to find out
be found

41. ———————— *Civil Procedure Code (Act XIV of 1882), ss 79, 80—Affidavit of service of summons, Sufficiency of.*—Where a defendant cannot be found, the affidavit of service must

of the Court must in each case depend on its own particular circumstances RAJENDRO NATH SANYAL *v.* JAN MEAH . I. L. R., 26 Calc., 101

[2 C. W. N., 574

42. ———————— *Mad. Act III of 1869, ss. 2, 3.*—Where a summons to a witness, issued under Madras Act III of 1869, was shown to a person and taken back,—*Held* that the summons had not been served IN RE KUPPAN

[I. L. R., 11 Mad., 137

43. ———————— Discretion to issue second summons—*Absence of return to first summons.*—When there is no return of service to a summons, the law gives a Court full discretion either to issue a second summons or to take or not take stronger measures. It is not imperative on one Court to take measures to expedite the service in another Court, but it is the business of the party interested to move the Court to do what is necessary DOWLUT MUNDUR *v.* OMRAO SINGH RANA 14 W. R., 336

44. ———————— *Civil Procedure Code, 1882, ss 99A and 72 Application for fresh summons—Limitation.*—An application for a fresh summons to a defendant, the summons originally issued having been returned unserved, is within the period prescribed by s. 99A of the Civil Procedure Code (Act XIV of 1882), if made within one year from the date of the nazir's countersignature below the bailiff's endorsement of non-service, the nazir being the proper officer of the Court to whom under s 72 of the Code the summons is delivered for service, and who is to return it to the Court if unserved. PARSOTAM VITHAL *v.* ABDUL REHMANBHAI

[I. L. R., 13 Bom., 500

45. ———————— Irregular service—*Ground for objecting to decree—Joint promissory note*—An irregular service of summons on two out of three

SUMMONS, SERVICE OF—*concluded.*

defendants to an action brought on a joint promissory note does not give the third defendant, who has been properly served, ground for objecting to a decree which has been passed against him under Act V of 1866. EWING *v.* GOSAI DAS GHOSE

[2 B. L. R., Ap., 7

46. ——————— *Defendant resident in another district—Act X of 1859, ss 47, 56.* —In a suit for rent under Act X of 1859, service of summons on a defendant, whose abode is in another

not such an irregularity as vitiates the whole proceedings and renders the decree, and a sale in execution thereof, void *Per* JACKSON, *J.*—The words

47. ——————— *Service on wrong person—Erroneous description of defendant in*

having come on for hearing, and there being nothing to show that the plaintiffs had been in any way deceived by *B.* the proper order to be made was for the dismissal of the suit. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* MAHOMED IBRAHIM PARKAR . . I. L. R., 4 Bom., 610

SUNDAY.

Arrest on—

See ARREST—CIVIL ARREST.

[4 Mad., Ap., 62

See CASES UNDER LORD'S DAY ACT.

Delivery of goods on—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 15 Bom., 338

Presentation of plaint on—

See HOLIDAY.

[3 B. L. R., Ap., 72 : 11 W. R., 537
10 W. R., 231

Time expiring on—

See CASES UNDER LIMITATION ACT, 1877, s. 5.

See WRITTEN STATEMENT . Cor., 30

SUNDAY—*concluded.*

Trial on—

See HOLIDAY . 8 B. L. R., Ap., 12
[W. R., 1864, Cr., 2
17 W. R., 230

See LORD'S DAY ACT . 6 N. W., 177

SUNDERBUNS BOUNDARY.

——————— Beng. Reg. III of 1828, s. 13.—

S. 13, r
provisic
of the
period
made by the Special Commissioner to that end appointed, should be final. No person could come in after that period (namely, three months from the date of the Commissioner's proceeding fixing boun
graphical
and the
period of
limitation allowed, no one could be heard to object
proof that
occupation
and under cul-
one had once
to say that
even cultivated lands within it were part of his settled zamindari. BARADAKANT ROY *v.* COMMISSIONER OF THE SUNDERBUNS

[2 B. L. R., P. C., 33 : 11 W. R., P. C., 14

SUNDERBUNS ESTATE—

See BENGAL ACT VII OF 1864, s 1.
[I. L. R., 14 Calc., 440

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
[I. L. R., 14 Calc., 440

SUNDERBUNS SETTLEMENT REGULATION (BENG. REG. III OF 1828)

——————— Lease granted by duly constituted Revenue authority, Effect of settlement on.

DUTT . . . . . 4 C. W. N., 513

SUPERINTENDENCE OF HIGH COURT.

SUPERINTENDENCE OF HIGH COURT—*continued.*

See BOND . . . 5 B. L. R., 167

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (1888), s. 135
[I. L. R., 26 Calc., 74
3 C. W. N., 70

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . 9 Bom., 249

See LAND ACQUISITION ACT, 1870.
[15 B. L. R., 197

See CASES UNDER REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.

———— Criminal Cases

See CASES UNDER REVISION—CRIMINAL CASES.

1 ACT XXIII OF 1861, S. 35.

C.

s.

Court of first instance, as well as of the Appellate Court where the orders of both the Courts appeared to be without jurisdiction. SHEO DYAL SINGH *v.* MAHOMED KAMIL . . . 3 Agra, Mis., 2

2. ———————— *Case tried in two*

JIVAJI *v.* BHIMRAV GOVIND . 11 Bom., 194

3 ———————— *Trial with jurisdiction—Error in decision on facts.*—The High Court cannot, where an inferior Court has jurisdiction to try a case, and has tried it, merely because there is an error apparent in the decision on the facts, alter that decision, where the law allows no appeal. IN THE MATTER OF THE PETITION OF PEAREE LALL SAHOO . . . . 7 W. R., 130

4. ———————— *Courts of Revenue officers—Courts acting without jurisdiction.*—The

5 ———————— *Act X of 1859, s. 108—Sale by Deputy Collector—Appeal.*—A Deputy Collector sold an under-tenure in execution of a

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, S. 35—*continued.*

taken place under the provisions of Act X of 1859. An application was made to the High Court under s 35 of Act XXIII of 1861 to set aside the order of the Collector, on the ground that the Collector had no power to review his own judgment, and conse-

whether s. 35 applied to the order of the Collector. The Full Bench refused to consider the question referred, on the ground that it was the intention of Act X of 1859 that the sale by the Deputy Collector should be final. IN THE MATTER OF THE PETITION OF DOCOWRI KAZI . B. L. R., Sup Vol., 517
[6 W. R., Act X, 53

6. ———————— *Order illegally*

powers given by the section, the order of the District Munsif was also annulled. SUBBAYA GOUNDEN *v.* VENKATAGIRI AIYAR . . . 6 Mad., 22

7. ———————— *Court exceeding its jurisdiction—Appeal heard without jurisdiction.*—The true construction of s. 35 of Act XXIII of 1861 was, that the High Court might call for the

SUPERINTENDENCE OF HIGH COURT—*continued*

1. ACT XXIII OF 1861, S. 35—*continued.*

is no ground for interfering with a decision which the Legislature intended to be final. JACKSON, J., differed. IN THE MATTER OF THE PETITION OF SUBJAN OSTAGUR

[B. L. R., Sup. Vol., 531 : 6 W. R., Mis. 77

8. ——— Power to call for record—Discretion of Court.—Under s 35 of Act XXIII of 1861 there was a discretion in the Court to call for the record or not; and in cases where the application was made a considerable time after the decree, the Court refused to call for it BOODHEE v ALLEE HYDER

[1 N. W., Ed. 1873, 271

9. ——— Appeal from order

10. ——— Application to transfer appeal—Laches—An application to the High Court, under s 35 of Act XXIII of 1861, to order a subordinate Court to receive an appeal,

OF RUSSICK LALL CHATTERJEE . 15 W. R., 518

11. ——— Appeal preferred

PURIKHIT RAWTRA

[7 B. L. R., Ap., 15 : 15 W. R., 426

12. ——— Decision by Col-

13. ——— Illegal order of Deputy Collector.—Where a Deputy Collector, who

. 10 W. R., 345

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, S. 35—*continued.*

14. ——— Order of Collector ejecting gantidar.—Where a gantidar on the suit of the patnidar was ejected from his holding, not-

v. WOOMANATH CHOWDHRY

[W. R., 1864, Act X, 47

15. ——— Extraordinary jurisdiction of High Court—Power to deal with order staying execution.—Where a Subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendants' favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order. GAMBHIRMAL v. CHEJMAL JODHMAL

[11 Bom., 151

16. ——— Refusal to set aside Collector's order made without jurisdiction, where it reversed an illegal order.—A rule having been issued calling on a judgment debtor to show cause why an order of the Collector in appeal, reversing an order made by a Deputy Collector in execution, should not be set aside, the rule was dis-

1859, and could not be upheld. TARACHUND MUNDUL v. BHYRUB CHUNDER CHUCKERBUTTY

[15 W. R., 551

17. ——— Right of appeal—Sale for arrears of rent, Irregularity in.—A Civil Court had no power, under s. 35 of Act XXIII of

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such appeal. SUDDER GOLAB SINGH v. RAM BUDDUL SINGH

[1 Ind. Jur., N. S., 1 : 4 W. R., Act X, 28

18. ——— Setting aside sale in execution—Courts exceeding jurisdiction.—If the Judge exceeded his jurisdiction in hearing the

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Act XXIII

dder Ameen.

, Agra, 204

MAHESH PANDEY v. BALDUT PANDEY

[3 Agra, Rev., 10

19. ——— Act XXIII of 1861, s. 35—Order made without jurisdiction—Interference with order of lower Courts.—Petitioner bought at a Court sale certain property which had

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, S. 35—*concluded.*

that suit Thereupon petitioner applied to the Munsif to re-sell the property in satisfaction of his claim. The Munsif refused to do so, and the Civil Judge,

respondent's objection that the orders were not open to question in the High Court should not prevail.

20. ——— *Order remanding suit—Application to set aside order from which*

SAADUT ALI . . . . . 6 N. W, 14

21. ——— *Power of Judge to interfere with order sanctioning complaint in offence against public justice.*—The District Judge

22. ——— *Power of High Court.*—Under this section, the High Court should not only reverse the illegal order, but pass the order that should have been made. ADURMONEE DOSSEE *v.* KAMINEE SONDUREE DEBIA [3 W. R., Act X, 145

RAJ CHUNDER ROY CHOWDHRY *v.* GREESH CHUNDER ROY . . . . 5 W. R., Mis., 45

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. BOMBAY REGULATION II OF 1827.

23. ——— *Plaint, Presentation of—Return of plaint for presentation to proper Court—Jurisdiction of Subordinate Judge—High Court, Power of, to interfere under Bom. Reg. II of 1827, s. 5, cl. 2.*—A second class Subordinate Judge returned a plaint for presentation in the proper Court on the ground that the subject-

second class Subordinate Judge was set aside with a direction that he should admit the plaint as of the date of its original presentation. GIRDHARLAL HARGOVANDAS *v.* LALLU JAGJIVAN [I. L. R., 20 Bom., 50

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15.

(a) CIVIL CASES.

24. ——— *Functions of High Court under s. 15 of the Charter Act—Nature of superintendence.*—*Held* (per STUART, C.J.) that under s. 15 of 24 & 25 Vict., c. 104, the power of superintendence to be exercised by the High Court is not merely administrative or ministerial, but also judicial. BIJEE KOOER *v.* DAMODUR DASS [5 N. W., 55

25.

26. ——— *Beng. Act VIII of 1869, s. 102.*—The Court held that in a suit for

[15 B. L. R., 111: 23 W. R., 288

Reserving decision in MOKHODA SOONDUREE DASSEE *v.* KUREEM SHAIKH . . . 23 W. R., 11

SUPERINTENDENCE OF HIGH COURT—*continued.*

3 CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

27. ———— *Existence of remedy by suit.*—Where the applicant has a remedy by regular suit, the Court is reluctant to interfere. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. IN THE MATTER OF THE PETITION OF MADHUB CHUNDER GIREE . . I. L. R., 3 Calc., 243

MAHASANKAR HARISANKAR *v.* VALIBHAI UMANJI [6 Bom., A. C., 174

BISHNO CHUNDER BHUTTACHARJEE *v.* SHOSHEE MOHUN PAL CHOWDHRY . . 22 W. R., 277

HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS [20 W. R., 202

28. ———— *Existence of remedy by suit.*—The High Court cannot interfere under s. 15 of the High Courts Act where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit. KHORSHED ALI *v.* CHOWDHRY WAHID ALI 15 W. R., 170

DOORGA SOONDERER DEBIA *v.* KASHEE KANT CHUCKERBUTTY . . . . 14 W. R., 213

29. ———— *Existence of other remedy.*—Where a petitioner had his remedy under s. 269, Act VIII of 1859, and the Munsif had, whether right or wrong, acted within his jurisdiction, the Court held it had no power to interfere under s. 15 of the Charter Act. HUR KISHORE AUDHICARY *v.* SUDOY CHUNDER NUNDEE [17 W. R., 80

30. ———— *Existence of remedy by regular suit.*—S was adjudicated an insolvent in the Insolvent Court, Calcutta. R thereupon [illegible] ...hich ...cree ...by ...bad ...the money deposited by R. The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under s. 15, 24 & 25 Vict., c. 104, but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under s. 92, Act VIII of 1859. IN RE MILLER

[4 B. L. R., A. C., 72 note: 12 W. R., 103

31. ———— *Delay in making application.*—The Court refused to extend assistance [illegible]

BHUGGOBUTTY KOWAR *v.* MONEY [2 C. L. R., 545

32. ———— *Laches of appellant—Power of High Court.*—Where the Court below adopted a different procedure, and, after partitioning the property, put up for sale the divided share of the execution-debtor, the High Court, in the exercise of its extraordinary jurisdiction, refused to interfere, in consequence of the laches of the applicant in neglecting to avail himself of an opportunity which the lower Appellate Court had given him, of showing that the partition which had been made was injurious to him. MATHURADAS GOVARDHANDAS *v.* FATMA ULKA BEGAM [5 Bom., A. C., 63

33. ———— *Order of Judge under s. 269, Civil Procedure Code, 1859—Resistance to delivery of possession in execution of decree.*—The Court declined to interfere under s. 15 of the Charter Act in order to set aside an order lawfully made by a Judge under s. 269, Act VIII of 1859, upon a complaint made to him of resistance or obstruction to the delivery of possession under s. 264, and stated that it would not have interfered [illegible]

[illegible] W. R., 0?

34. ———— *Laches—Existence of another remedy.*—Petitioner, a decree-holder, allowed another decree-holder to obtain a decree upon a regular suit declaring him entitled to follow the [illegible]

[illegible]

35. ———— *Order rejecting claim of attorney to lien on document for his costs—Existence of other remedies.*—A firm of solicitors, having been summoned to produce certain documents before the Court, objected to do so claiming a lien upon them for costs due to them from the party at whose instance the documents were called, and their [illegible] the High [illegible]

Semble—The power of superintendence under s. 15

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*continued.*

would be exercised by the High Court to correct judicial errors where, in the interest of justice, it is necessary to do so. SWINHOE & CHUNDER *v* HEERA LAL SIRKAR . . . . 2 C. W N., 727

36. ———— *Effect as to merits of case of rejection of claim to exercise of extraordinary jurisdiction*—The extraordinary powers [illegible] rcised [illegible] in the [illegible] plain- [illegible] The [illegible] 's not [illegible] nerits, [illegible] Munsif [illegible] Munsif did right in receiving it. SHOOVANKURRY DABEE *v.* DWARKA NATH MOOKERJEE [25 W. R., 344

37. ———— *Giving appeal where none lies—Order doing injustice.*—The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none. Nor should the Court in the exercise of those powers interfere when such interference would have the effect of working an injustice. NARAYANBHAI LALBHAI *v.* GANGAKRISHNA BAIKRISHNA . . . . 4 Bom., A. C., 87

38. ———— Exercise of jurisdiction—*Giving appeal where none lies*—The High Court cannot admit an appeal which Act VIII of 1859 and s. 11, Act XXIII of 1861, do not allow. S. 15 of the Charter Act held not to apply to the question. GOBINDNATH SANDYAL *v.* RAM COOMAR GHOSE [9 W. R., 115

39. ———— *Party bringing appeal without right of appeal.*—*Per* BIRCH, *J.*—A party who [illegible] Court when [illegible] not entitled [illegible] treat it as a [illegible] traordinary [illegible] Vict., c. 104. IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDRY [I. L. R., 1 Calc., 383

40. ———— *Admission of appeal after time—Appeal, Delay in filing—Act X of 1859, s. 25.*—The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under s. 25, Act X of 1859. AMBA NASHYAD *v.* GAGAN SHUTAR [2 B. L. R., Ap., 35

S. C. OMBA NUSHYO *v.* GUGUN SHOOTUR [11 W. R., 130

41. ———— *Appeal withdrawn without authority—Application to set aside order refusing to restore appeal*—An appeal which had been preferred to the Judge was withdrawn the next day through another pleader. Shortly after an application was made to have the appeal restored, on the ground that the second pleader had no authority to withdraw the appeal. The Judge refused the application. *Held* that no appeal lay from that [illegible]

MUDHOOMUTTY DEBIA *v.* DHUNPUT SINGH [13 W. R., 167

42. ———— *Order releasing property from attachment*—An order of a competent [illegible]

43. ———— *Illegal arrest in Court of Magistrate.*—The High Court declined to [illegible] Magistrate, but was acquitted at the time of his arrest IN THE MATTER OF THE PETITION OF GUZEREE LALL . . . . . 13 W. R., 393

44 ———— *Award under the Nawab Nazim's Debts Act, 1873, on matter already decided by decree.*—Where certain judgment-creditors submitted a decree of Court to the Commissioners appointed under the Nawab Nazim's Debts Act, 1873, as if it were a new and unascertained [illegible]

45. ———— *Power over Collectors.*—Under s. 15 of the High Courts Act, the High Court had a power of superintendence over Collectors' Courts, and could interfere to [illegible]

[illegible] W. R., Act X, [illegible]

Contra, HURO MOHUN MOOKERJEE *v.* KEDARNATH DOSS . . . . 5 W. R., Act X, 25

46. ———— *Setting aside decree made ultra vires.*—Where a decree is *ultra*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

tires, the debtor's remedy is either by an application for review or by an application to the High Court to exercise its powers under the Charter Act, s 15. DOORGA DOSS SANDYAL *v.* PANCHOO RAM MUNDUL [23 W. R., 271

47. ——————————— *Refusal of application under Act VIII of 1859, s. 119—Ex-parte decree.*—Judgment was passed *ex parte* against a defendant who had not appeared. The defendant failed to show cause for setting aside the judgment under s. 119 of Act VIII of 1859. He then applied to the High Court under s. 15 of 24 & 25 Vict., c. 104, to set aside a portion of the decree as having been passed without jurisdiction. The Court refused to interfere. IN THE MATTER OF THE PETITION OF LESLIE [10 B. L. R., 68: 18 W. R., 474

48 ——————————— *Discretion of Municipality—Rates for cleaning tank.*—Case in which the Munsif held that the Municipality had

cipality *Held* that, even though the rates charged by the Municipality were higher than those which could be obtained by other persons, that was no ground for the interference of the High Court. IN THE MATTER OF JOGESH CHUNDER DUTT [16 W. R., 285

49. ——————————— *Exercise of discretion*

ment under s. 4, the Court refused to interfere under s. 15 of the Charter Act, holding that the Judge had not declined to accept jurisdiction in the case, and that he was right in refusing to exercise the jurisdiction vested in him by s 5. ASHRUF HOSSEIN *v.* HAZARA BEGUM . . . 18 W. R., 398

50. ——————————— *Order rejecting document under s. 129, Civil Procedure Code, 1859.*—The High Court refused to interfere under s. 15 of the Charter Act to set aside an order rejecting a document made by a Court under Act VIII of 1859, s 129, an appeal from such order being barred by s. 363 IN THE MATTER OF ERSKINE 18 W. R., 511

51. ——————————— *Error of law.*—*Quære*—Is a conflict between a Judge's order and a direction of law ground for the High Court to exercise its powers of interference? DOSSEE *v.* SREENIBASH DEY . . . 12 W. R., 74

52. ——————————— *Error of law—Case where no appeal lies to High Court.*—Mere errors of law committed by a lower Appellate Court in cases in which the High Court has no appellate jurisdiction do not give the latter Court power to interfere under s 15 of the Charter Act, its interference being restricted to cases in which the lower Court exercises a jurisdiction which it has not, or refuses to exercise a jurisdiction which it has KALEE HUR DASS *v.* ROODRESSUR CHUCKERBUTTY [15 W. R., 90

ISSUR CHUNDER PODDAR *v.* SHOSHEE DHUR SEN [18 W. R., 289

53. ——————————— *Court acting without jurisdiction—Error in law*—The interference of the High Court under s. 15, 24 & 25 Vict., c. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or has improperly declined jurisdiction, and should *not be extended to cases in which the Court, though* competent in respect of the subject-matter, has misconceived the law in deciding a case. IN RE KASINATH ROY CHOWDRY . 7 B. L. R., 146 note

S. C. KASHEENATH ROY CHOWDHRY *v.* SHASTREE SOONDUREE DOSSEE . 11 W. R., 402

54 ——————————— *Error in law—Injustice, Prevention of.*—Where there has been a manifest error of law, and to prevent manifest injustice, the High Court in the exercise of its extraordinary jurisdiction will remand a case to the lower Court, though the value of the claim may be under R500 and the case may be one in which a special appeal is not allowed. RAMABAI *v.* TRIMBAK GANESH DESAI . . . 9 Bom., 283

55. ——————————— *Erroneous order in law made in consequence of false statement of party*—The High Court will interfere, under s. 15 of the Charter Act, with an order made by a lower Court which is merely contrary to law, when that order has been passed in consequence of a wilfully false statement made by the opposite party ROGHONUNDUN LALL *v.* MOHESH LALL 3 C. L. R., 137

56 ——————————— *Wrong decision where no special appeal lay.*—Where the lower Court's decision was fundamentally wrong in law, and the liability of the defendants in the essential

57. ——————————— *Refusal of order of confirmation of sale—Error of law.*—A certified purchaser of property sold in execution of a decree applied to the Judge for an order of confirmation of sale, and was refused. *Held* that the High Court had no power to interfere with the Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S 15 —*continued.*

which there was no appeal. IN THE MATTER OF THE PETITION OF DURGA CHARAN SIRKAR [2 B. L. R., A. C., 165

S. C. DOORGA CHURN SIRCAR *v.* DOORGA CHURN GHOSSAL . . . 11 W. R., 23

58. ———— *Error of law.*—The High Court will not, under s. 15 of 24 & 25 Vict, c 104, interfere with judgments, decrees, or orders of a lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts, there must be some special ground justifying the High Court to exercise such powers MADHUB CHUNDER GIREE *v* SHAM CHAND GIREE. IN THE MATTER OF THE PETITION OF SHAM CHAND GIREE . . I. L. R., 3 Calc, 243

59. ———— *Error of law—Revision of judicial proceedings—Jurisdiction.*—The High Court is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it conferred on it by s 15 of 24 & 25 Vict., c 104, to interfere with the order of a Court subordinate to it, on the ground that such order has proceeded on an error of law or an error of fact. Where, therefore, on appeal by the judgment-debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Court set

60. ———— *Revision of judicial proceeding—Jurisdiction of High Court—Civil Procedure Code, s 622*—*Held* by EDGE, C.J, and OLDFIELD and BRODHURST, JJ, that under s 15 of 24 & 25 Vict, c 104, it is compe-

interfere with and set right the orders of a subordinate Court on the ground that the order of the subordinate Court has proceeded on an error of law or an error of fact The High Court's power to direct a Subordinate Judge to do his duty is not limited to cases in which such Judge declines to hear or determine a suit or application within his jurisdiction *Held* by STRAIGHT and TYRRELL, JJ, that the word "superintendence" used in s 15 of the Charter Act contemplated and now includes powers of a judicial or quasi-judicial character, apart from those conferred on the Court by s 622 of the Civil Procedure Code, but that the last-mentioned provision may properly be accepted as indicating the extent to

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT, C. 104), S. 15 —*continued.*

declared by law to be final *Tej Ram* v *Harsukh, I L R, 1 All., 101, Girdhari Singh* v *Hardeo Narain Singh, L. R, 3 I. A., 230,* and *In the matter of the petition of Mathra Parshad, I L. R, 1 All., 296,* referred to The judgment of PETHERAM, C J, in *Badami Kuar* v *Dina Rai, I. L R, 8 All, 111,* explained MUHAMMAD SULEMAN KHAN *v* FATIMA [I. L. R., 9 All., 104

61. ———— *Civil Procedure Code (1882), s 622—Failure of duty by a Subordinate Court*—Where a subordinate Court had

supervision vested in it by s 15 of 24 & 25 Vict, c. 104, to direct the subordinate Court to do its duty, and complete the case according to law. *Muhammad Suleman Khan* v *Fatima, I. L. R, 9 All. 104,* referred to ABDULLAH *v.* SALARU [I. L. R., 18 All., 4

62 ———— *Error of law—Rejection of claim to attached property without decision on necessary questions*—Where it was found

under s. 622, Civil Procedure Code. S 15 of the Stat 24 & 25 Vict, c. 104, gives the High Court, in general terms, power of "superintendence over all Courts which may be subject to its appellate jurisdiction" The law having advisedly and wisely left this power unlimited, it is not desirable to limit it by any hard-and-fast rule, and it is not every error of law that would be a ground for the exercise of this power, and a party's claim to the interference of the High Court is very much weakened when he has another remedy provided for him by law. *Madhub Chunder Giree* v *Sham Chand Giree, I. L R., 3 Calc, 243,* and *Tejram v. Harsukh, I. L. R, 1 All, 101* BHAGWAN RAMANUJ DAS *v* KHETTER MONI DASSI . . . 1 C. W. N., 617

63. ———— *Supervision as to execution of order.*—The High Court has jurisdiction to direct a lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by that Court, and to see that the lower Court does not pervert the order or do that

64. ———— *Act X of 1859, s. 151—Execution proceedings.*—Where a Deputy Collector refused to entertain an application by a

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

defendant for realization of costs awarded by a Court of appeal, and for refund of the amount which the plaintiff had realized from the defendant in execution of the decree of the lower Court, but which had been disallowed by the Court of appeal, and where, on appeal, the Judge held that no appeal lay under s 11 of Act X of 1859,—*Held* that the High Court had power, under 24 & 25 Vict, c. 104, s. 15, to order the Deputy Collector to enforce restitution of the amount realized from the defendant in excess of the amount allowed by the Court of appeal, and also to execute that part of the decree which awarded costs to the defendant. IN THE MATTER OF THE PETITION OF GOBIND KOOMAR CHOWDRY . . B L. R., Sup Vol., 714 [2 Ind Jur., N. S., 199: 7 W. R., 520

65. —————— *Order of Collector giving possession, Reversal of.*—Where a Collector, having passed an order for possession of a certain tenure in favour of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Bengal Act VIII of 1865 for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its powers under s 15 of the Charter Act. NARAYANI DAYI DEBI *v.* CHANDI CHARAN CHOWDHRY [3 B. L. R., Ap., 65

S. C. NARAINEE DABEE *v.* CHUNDEE CHURN CHOWDHRY . . . 11 W. R., 512

66. —————— *Letters Patent, cl. 16—Release of person imprisoned in execution*

s. 16 of the Letters Patent, interfere to order the release of the petitioner. GOPAL SINGH *v* COURT OF WARDS . . . 7 W. R., 430

67. —————— *Assignment of decree—Civil Procedure Code, 1859, ss. 216, 265—*

68. —————— *Execution of decrees for rent—Act X of 1859, ss 23, 77, and 160.—*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT, C. 104), S. 15 —*continued.*

Whether a decree for rent, under Act X of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence

L. R., 9 I. A., 174

69. —————— *Acting in excess of, or refusal of, jurisdiction.*—A party dissatisfied with a legitimate finding under s 15, Act XIV of 1859, has a special remedy by a suit in a Civil Court, and cannot claim the High Court's interference under s. 15, 24 & 25 Vict, c. 104,

70. —————— *Order exempting debtor from liability on ground of limitation*—S. 15 of the 24 & 25 Vict., c 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases

SHOWDAMINEE DOSSEE *v* MANICK RAM CHOWDHRY [9 W. R., 386

KALEE PERSAUD CHOWDHRY *v.* RAM SOONDUR SIRCAR . . . . . 12 W. R., 129

71. —————— *Postponement of execution sale without taking security.*—Where, in a case under Bengal Act VIII of 1869, a Munsif, on a claim being preferred to property attached in execution, postponed the sale of it without taking security

MATTER OF THE PETITION OF BAGRAM [20 W. R., 10

72. —————— *Execution of decree, Refusal to stay—Allegation of fraud and finding against it.*—*W* got a decree against *M* in the Court of the Sudder Ameen, and in execution

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S 15 —*continued.*

extraordinary power given to the High Court by s 15 of the Charter Act. JUMAL ALI *v.* WAHED ALI . . . 11 W. R., 97

73 ———— *Order within jurisdiction—Suit for arrears of rent and ejectment.*—A suit for arrears of rent, where the plaint contained also a prayer for ejectment, having been dismissed by the first Court, an appeal was preferred to the Collector, who heard the case without any objection as to jurisdiction, and decreed it solely

74. ———— *Suit brought in*

obtained a decree, but the decree was reversed on appeal On special appeal the Court, though holding that no special appeal would lie, set aside the decrees of both the lower Courts as having been passed without jurisdiction TARINI CHARAN MOOKERJEE *v* PURNA CHANDRA ROY

[6 B. L. R., 717 : 15 W. R., 397

75. ———— *Order made without jurisdiction.*—The High Court exercised its powers of superintendence to set aside a judgment of a Judge reversing a judgment of a Munsif passed in accordance with the award, the Judge's order being without jurisdiction. IN THE MATTER OF ILAHI BUX . . . . . 5 B L. R., Ap., 75

S. C. ELAHEE BUKSH *v.* HAJOO 14 W. R., 33

76. ———— *Order made without jurisdiction—Appeal in rent suit to wrong Court.*—A suit to recover R254 as arrears of rent having been decreed by the Deputy Collector for R43, the defendant appealed to the Judge but

Charter Act, set aside the Collector's decree as made without jurisdiction. ROOKNEE ROY *v* AMRITH LALL . . . . . 14 W. R., 254

77. ———— *Order of Collector made without jurisdiction*—*N* sued his

1869, but subsequently postponed to the 8th, on

[... W. R., 400

78 ———— *Order contrary*

an opinion that the order was contrary to law, and left it to the Munsif to act upon such opinion KALI CHURN GIR GOSSAIN *v.* BANGSHI MOHAN DAS

[6 B. L. R., 727 : 15 W. R., 339

79. ———— *Order contrary to law—Civil Procedure Code, 1859, s. 246—Want of jurisdiction—Act VIII of 1859, s 246 Order*

[6 B. L. R., 721 : 15 W. R., 163

80. ———— *Order passed*

TION OF WISE . . . 10 B. L. R., Ap., 20

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

81. ———————— *Order passed without jurisdiction—Revival of suit—Act X of 1859, ss 54, 55, and 58*—A suit for arrears of rent was dismissed by the Deputy Collector for default

applied under s. 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application On appeal, the Judge held that the suit might be revived, and remanded the case for trial. The High Court, under its general power of superintendence, set aside the order of the Judge as passed without jurisdiction, holding that, although the Deputy Collector had formerly struck off the case under s 54, yet it was in fact an order under s. 55, and therefore under s. 58, Act X of 1859, no appeal lay to the Judge HABIB SOBHAN *v.* MAHENDRA NATH ROY 2 B L R., Ap., 32: 11 W. R., 129

82. ———————— *Order made without jurisdiction—Omission to object to illegal proceeding*—Where a respondent in a Collector's Court

allowed the appeal to be heard without objection, he was not entitled to the relief sought. DROBO MOYEE DABEE *v.* BIPIN MUNDUL . 10 W. R., 6

83 ———————— *Error in reversing judgment for want of jurisdiction.*—Where the District Judge reversed the decree of the Munsif for

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SHANKAR . 4 Bom., A. C., 173

84. ———————— *Judge exceeding his powers under s. 246, Act VIII of 1859.*—

GHOSE *v.* GOURCHURN MOJOOMDAR [18 W. R., 402

85. ———————— *Improper exercise or improper refusal to exercise jurisdiction*—

The High Court will not exercise its extraordinary powers under the Charter Act, s. 15, except where jurisdiction has been either exercised or refused improperly: it will not interfere under that section even where a wrong decision has been arrived at, if the Court which arrived at such decision exercised a jurisdiction which it properly possessed. KHOWAZ RAM BUX SINGH *v.* BISHENDHAREE GEER [23 W. R., 403

86. ———————— *Refusal to entertain suit by Court from which there is an appeal.*—

THANAND THAKUR [4 B. L. R., Ap., 28: 13 W. R., 34

87.

not consider himself competent to make the inquiry as to the nature of the possession necessary under s. 246, Act VIII of 1859, the High Court declined to interfere under the special provisions of the Charter Act, because the decree holder had a remedy by regular suit. IN THE MATTER OF HUREEHUR MOOKERJEE. HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS . . 20 W. R., 203

88. ———————— *Decision on irregular procedure under s 230, Civil Procedure Code, 1859*—A decree-holder in execution having got possession of certain property, application was made for an investigation under s. 230, Act VIII of 1859 The Munsif, without going into evidence, rejected the application, and the Judge, in the same manner, reversed the Munsif's judgment and gave the applicant possession. The High Court on application set aside both decisions as not being decisions on the investigation of a suit within the section. The

89. ———————— *Order rejecting*

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Charter, compel the lower Court to exercise its jurisdiction. *Golucknarain Dutt v. Bistooprea Dossee,*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

1 W. R., 140, referred to and questioned COLLECTOR OF BOGRA *v.* KRISHNA INDRA ROY
[2 B. L. R., A. C., 301: 11 W. R., 191

90. ———— *Denial of jurisdiction—Act X of 1859, s. 77.—A* sued *B*, a raiyat, for arrears of rent *C* was added as a party under s. 77, Act X of 1859. The Collector on appeal

IN THE MATTER OF THE PETITION OF NASSIR JAN
[7 B. L. R., 144: 15 W. R., 418

91. ———— *Refusal to attach property—Refusal of jurisdiction.*—Where a Munsif refuses to attach property in execution which he is bound to attach, he may be compelled to do so by the High Court in the exercise of its powers of supervision. MUNOHUR PAUL *v.* WISE 15 W. R., 246

92. ———— *Refusal to execute decree—Refusal of jurisdiction.*—Where a

SHURUT SOONDUREE DABEE . 14 W. R., 9

93. ———— *Refusal of Deputy Collector to sell in execution of decree where plaintiff has obtained declaration of his right in Civil Court.*—If a decree of a Civil Court declares that the plaintiff has a right to bring certain property to sale in a Deputy Collector's Court, and the

v. COCHRANE . . . . 20 W. R., 16

94. ———— *Refusal to consider grounds—Review of judgment of predecessor.*—Where a Court subordinate to the High Court rejected an application for a review of judgment,

grounds IN THE MATTER OF THE PETITION OF MATHRA PARSHAD . I. L. R., 1 All., 296

95. ———— *Refusal to grant application for review of judgment of predecessor—Refusal to exercise jurisdiction.*—Forty-six suits were brought against the defendants and dismissed by the Munsif of B The plaintiffs in each

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

were preferred to the High Court, and pending such appeals an application for a review of the remaining forty cases was made to the District Judge, who ordered that the petition for review should stand over until the result of the special appeal should be known The High Court having on special appeal restored the decision of the Munsif dismissing the

beyond his jurisdiction, and that the High Court had therefore no power under s. 15 of the Charter Act to interfere. RAM LALL SINGH *v.* JANKI MAHATOON
[4 C. L. R., 14

96. ———— *Wrongly declining to exercise jurisdiction.*—Where a Judge declined jurisdiction on a wrong ground, as that of a question of title having arisen, when even if that were the case he had jurisdiction, the High Court interfered under s. 15 of the Charter Act RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM
[9 W. R., 336

97. ———— *Orders of Courts established under Land Acquisition Act (X of 1870).*—The Courts established under Act X of 1870 are subject to the appellate jurisdiction of the High Court, and not the less so because an appeal lies to the High Court from their decisions in certain cases only. The High Court consequently has the power of superintendence over those Courts under s. 15 of the Charter Act IN THE MATTER OF THE PETITION OF ABDOOL ALI . . . 15 B. L. R., 197

98. ———— *Dismissal of ministerial officer.*—With reference to the rule that

his remedy from the Local Government. IN THE MATTER OF THE PETITION OF AKBAR ALI
[19 W. R., 148

99. ———— *Dismissal of ministerial officer.*—A Munsif, having charged his serishtadar with carelessness and irregularities, recommended his transfer to some other Munsifi. The Judge, after calling for and receiving an explanation from the serishtadar, dismissed him from office. The High Court refused to interfere in the exercise of its

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

general power of superintendence, holding that, although the Judge had exercised an original power where he had only an appellate jurisdiction, he had done so on a complaint made by the Munsif, and the petitioner, if aggrieved had a remedy under Act VI of 1871 in an application to the Local Government. IN THE MATTER OF FAKEER CHAND LALL

[20 W. R., 470

100. ——————— *Dismissal of*

c. 204, s. 15, to take up and try the case accordingly. CHUNDER KANT BHUTTACHARJEE *v.* BINDABUN CHUNDER MOOKERJEE . 7 W. R., 277

S. C. IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE

[B. L. R., Sup. Vol., Ap., 43

101 ——————— *Erroneous order —Putting on the record party not a legal representative* —Where a decree had been obtained against a British subject domiciled in India, who subsequently died intestate, and an order was made reviving the decree against one of his children, and ordering execution to proceed before letters of administration to his estate had been taken out, and without inquiry being made as to who were his legal personal representatives,—*Held* that, although no appeal lay against the order, yet that, as it was clearly erroneous and as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the Court was justified in interfering under s. 15 of the Charter Act. POGOSE *v.* CATCHICK

[I. L. R., 3 Calc., 708: 2 C. L. R., 278

But *see* POGOSE *v.* AHSANOOLLAH

[I. L. R., 3 Calc., 710 note

102 ——————— *Order substituting name of purchaser instead of plaintiff—Jurisdiction of Civil Court.*—A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn Such an order, if made, is made without jurisdiction,

of the superintendence vested in it by s. 15 of 24 & 25 Vict., c. 104. JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE

[9 W. R., 309

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

103. ——————— *Pauper, Rejection of application to sue as—Civil Procedure Code, 1859, s. 304—Case where there is no appeal* —Where a decision (*e.g.*, the rejection of an application under Act VIII of 1859, s. 304) is declared by law not to be subject to appeal, the High Court cannot interfere under 24 & 25 Vict., c. 104, s. 15 BABUR ALI *v.* GOKUL LALL . . 24 W. R., 62

104. ——————— *Recorder of Moulmein—Act XXI of 1863, ss. 16 and 17—Suspension of pleader*—The High Court has, under s. 15 of 24 & 25 Vict., c. 104, general superintendence over the Court of the Recorder of Moulmein established under Act XXI of 1863. An order passed by the Recorder of Moulmein under s. 16 or 17 of Act XXI of 1863, granting or withdrawing a license to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court. IN THE MATTER OF THOMSON

[6 B. L. R., 180: 14 W. R., 257

105. ——————— *Refusal of original Court to entertain application for review—Refusal of leave to sue in formâ pauperis.*—Under s. 15 of 24 & 25 Vict., c. 104, the High Court set aside an order of a Court of original juris

PETITION OF UMASUNDARI DEBI

[5 B. L. R., Ap., 29

106. ——————— *Review, Admission of, after prescribed time* —The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the

[2 B. L. R., A. C., 181: 11 W. R., 58

107. ——————— *Review, Admission of, after prescribed time.*—The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the

refused to interfere. ASHRAFANNISSA BEGUM *v.* INAET HOSSEIN . 5 B. L. R., 316: 13 W. R., 439

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S 15 —*continued.*

108. ———— *Order to compel Court to make sale absolute*—The High Court

not expedient to confirm IN THE MATTER OF THE PETITION OF OODICT ZUMAN . 8 W. R., 109

109 ———— *Sale made pending enquiry under Act XVII of 1873 (the Nawab Nazim's Debts Act)—Order refusing to confirm sale.*—Certain immoveable property having been

that the purchaser would purchase an empty title. Subsequently the commissioners came to an actual finding under s 12, declaring the property to be held by the Government of India, and their opinion

the sale in this case that it was unnecessary to inquire whether the order was in strict conformity with the law or not. KALEE MOHUN SIRCAR v. HUMAYOON KADER MAHOMED ALI MIRZA BAHADOOR *alias* AMEER SAHEB . . 24 W. R., 311

110 ———— *Order setting aside sale made on insufficient application.*—When

into the matter. Where a Judge in such a case sets aside a sale after finding material irregularity and substantial injury, his finding is final, and cannot be questioned by the High Court in the exercise of its extraordinary jurisdiction. SOOKOOMAR SINGH v. KASHEE SINGH . . . 13 W. R., 250

111 ———— *Act VIII of 1859, s 364—Reversal of sale for inadequacy of price*—Certain bank shares, the property of a judgment-debtor, were sold in execution of a

DACOSTA . . . B. L. R., Sup. Vol, 432

S. C. DACOSTA v. HALL . 5 W. R., Mis., 25

112 ———— *Civil Procedure Code, 1877, ss. 290 and 622—Irregularity in sale in execution of decree—Order of Judicial Commis-*

between the day of sale and the notification. The

the ground that the fact of the sale having taken place twenty-nine instead of thirty days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set

Commissioner. BHEKRAJ KOERI v. GENDH LAL TEWARI . . . I. L. R., 5 Calc., 878

113. ———— *Application to set aside sale in execution of decree—Circumstances disentitling party to relief.*—A party applying to the High Court for relief under s. 15 of 24 & 25 Vict., c. 104, must clearly show that he has not

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S 15 —*continued.*

was claimed was or was not in the British territory. BHYRUL SINGH *v.* JHOGRU PATNEE [11 W. R., 506

122. ———— *Stay of suit in India against company being wound up in England.*—The High Court will, in the exercise of its general power, stay the proceedings in a suit in India against a company which is being wound up by order of the Court of Chancery in England under the Companies A
such as to i
HINDUSTAN,
RAICHAND.
RAICHAND ... 5 Bom., O C, 65

123. ———— *Recorder of*

OF MEE TEEE . 15 W. R., 351

124. ———— *Order passed without legal evidence—Civil Procedure Code, 1859, s. 246.*—A party to a certain proceeding instituted under s 246, Act VIII of 1859, having been sum-

[15 W. R., 121

125 ———— *Execution proceedings—Refusal of party to attend as witness*—A Principal Sudder Ameen ordered the attendance

was arbitrary, vexatious, and unnecessary, but being doubtful, in the absence of any provision in the Civil Procedure Code, of its powers of interference

TION OF JANKEE BULLUB SEN [B. L. R., Sup Vol., 716

S. C. JANOKEE BULLUB SEIN *v.* DUKHINA MOHUN CHOWDHRY . 7 W. R., 519

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C 104), S 15 —*continued.*

126. ———— *Improper exercise of judicial powers under Legal Practitioners' Act (XVIII of 1879), as amended by Act XI of 1896, s. 36—Nature of proof required.*—Where

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name of the
at the words
' in s 36 of
Practitioners'
Act XVIII of 1879) refer to proof by any of the means known to the law of the fact upon which the Court is to exercise its judicial determination, and

given by s 15 of the Charter Act IN RE SIDDESHWAR BORAL . 4 C. W. N. 36

127. ———— *Order under Legal Practitioners' Act XVIII of 1879, s. 36—Order including a person's name in the list of touts*—*Held* that in the case of an order passed under s 36 of Act XVIII of 1879 the High Court could only interfere in the exercise of the powers of superintendence conferred upon it by s 15 of the High Courts Act, 1861, and that it would not interfere even then, where the sole ground upon which its interference was asked for was that the decision of the District Judge was against the weight of the evidence IN THE MATTER OF THE PETITION OF MADHO RAM . I. L. R., 21 All., 181

(*b*) CRIMINAL CASES

128. ———— *Refusal of High Court to interfere where right of appeal exists*—*Held per* AINSLIE and MCDONELL, *JJ*, that the High Court, in the exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have

v. RAJCOOMAR SINGH I. L. R., 3 Calc., 573

S. C. RAJCOOMAR SINGH *v.* BINONATH GHUTTUCK [1 C. L. R., 352

129. ———— *Setting aside valid conviction in case wrongly instituted*—*Per*

S. C. NOBIN CHUNDER BANIKYA *v.* EMPRESS [10 C. L. R., 369

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

130. ———— *Order of discharge—Presidency Magistrates Act (IV of 1876),* [illegible] —The only [illegible] set aside [illegible] Magis- [illegible] f 1877, [illegible]

extraordinary powers that which he might obtain had he a right of appeal. IN THE MATTER OF POONA CHURN PAL . . . I. L. R., 7 Calc., 447

131. ———— *Error in law—Offence not constituted on facts proved in non-appealable case.*—Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners, and the Court of appeal from such Court did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. REG *v.* HARGOVANDAS [9 Bom., 448

132. ———— *Act V of 1861,* [illegible]

PETITION OF RAHOMAN SIRKAR [10 B. L. R., Ap., 4: 18 W. R., Cr., 67

133. ———— *Orders under Criminal Procedure Code, 1872, s. 518—Nuisance.*—The extraordinary powers conferred on the High Court by s. 15 of the Charter Act extend to the revising of orders passed under the Code of Criminal Procedure, s. 518. GHOSHAIN LUCHMUN PERSHAD POOREE *v.* POHOOP NARAIN POOREE [24 W. R., Cr., 30

134. ———— *Order under* [illegible]

Code IN THE MATTER OF THE PETITION OF CHUNDER NATH SEN . . I. L. R., 2 Calc., 293

135. ———— *Orders under Criminal Procedure Code, 1872, s. 518—Criminal Procedure Code, 1872, s. 297—Orders in judicial proceeding.*—*Held* that, orders legally made under s. 518 of the Code of Criminal Procedure not being orders made in a judicial proceeding, the High Court had no power to deal with them under s. 297 of the Code of Criminal Procedure, but where an order under that section was illegal, the High Court set it aside under s. 15 of the Charter Act, 24 & 25 Vict., c. 104. *In the matter of the petition of Chunder Nath Sen, I. L. R., 2 Calc., 293,* followed. BRADLEY *v.* JAMESON [I. L. R., 8 Calc., 580

CHUNDER COOMAR ROY *v.* OMESH CHUNDER MOJOOMDAR . . . 22 W. R., Cr., 78

BANEE MADHUB GHOSE *v.* WOOMANATH ROY CHOWDHRY . . . 21 W. R., Cr., 26

SREENATH DUTT *v.* UNNODA CHURN DUTT [23 W. R., Cr., 34

136. ———— *Order of Magis-* [illegible] brought to the [illegible] the [illegible] 24

137. ———— *Criminal Procedure Code (Act X of 1882), s. 144—Order to abstain from certain act.*—A Deputy Commissioner [illegible]

DEBI . . . . I. L. R., 16 Calc., [illegible]

138. ———— *Criminal Procedure Code (Act V of 1898), ss. 145, 435—Power of local Legislature—Power of revision by High Court—Order concerning a ferry purporting to be made under s. 145.*—The local Legislature has power to overrule a statutory power conferred on the High Court; but this was not the object and result of the legislation expressed in s. 435 of the Criminal Procedure Code of 1898. *Empress v. Burah, I. L. R., 4 Calc., 172: L. R., 5 I. A., 178,* referred to. The terms of s. 435 mean that orders under the exempted sections mentioned in [illegible] with jurisdiction. If [illegible]

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

Lal Das v. *Manook, 2 C. W. N., 572;* and *Queen-Empress* v. *Pratap Chunder Ghose, I. L. R., 25 Calc., 852,* followed. HURBULLUBH NARAIN SINGH v. LUCHMESWAR PROSAD SINGH
[I. L. R., 26 Calc., 188
3 C. W. N., 49

139. ——— *Criminal Procedure Code, 1898, ss. 145, 439—Dispute as to ownership of land—Non-joinder of necessary parties—Alteration of proceedings by succeeding Magistrate*

has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the Charter

140. ——— *Order of remand—Criminal Procedure Code (Act XXV of*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

remand IN THE MATTER OF THE PETITION OF MATHURANATH CHUCKERBUTTY
[9 B. L. R., 354: 17 W. R., Cr., 55

141. ——— *Order by Judge*

MENT OF BENGAL. QUEEN v. AMEER KHAN
[7 B. L. R., 250 note: 15 W. R., Cr., 60

extraordinary jurisdiction of the High Court, and the application was adjourned, and an order made calling on the Government to show cause why it

MENT OF BENGAL QUEEN v. AMEER KHAN
[7 B. L. R., 244 note

143. ——— *Order of Magistrate for warrant without jurisdiction.*—The High Court has power under its general powers of superintendence to quash an order made by a Magistrate without jurisdiction for the issue of a warrant. IN THE MATTER OF BANKA BEHARI GHOSE
[2 B. L. R., A. Cr., 17: 11 W. R., 28

144. ——— *Power of High*

for sanction under s 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using

3 C. W. N., 539

145. ——— *Power of High Court to revise order of Presidency Magistrate*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C 104), S. 15 —*concluded.*

s. 15 of the Charter Act (24 & 25 Vict., c. 104) That section has always been interpreted in a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts But the High Court has no power under the Code of Criminal Procedure to interfere in revision with an order of dismissal passed by a Presidency Magistrate *Colville v. Kristo Kishore Bose, I. L R., 26 Calc., 746,* dissented from. *Opoorba Kumar Sett v Probod Kumari Dassi, 1 C. W. N., 49,* referred to A Presidency Magistrate acting under s 203 of the Criminal Procedure Code dismissed a complaint on the report of the police without examining the complaint and without finding that there was no sufficient ground for proceeding. The High Court acting under s 15 of the Charter Act ordered a further inquiry to be made into the matter of the complaint. CHAROOBALA DABEE v. BARENDRA NATH MOZAMDAR . I. L. R., 27 Calc., 126 [3 C. W. N., 601

OPOORBA KUMAR SETT v. PROBOD KUMARI DASSI [1 C. W. N., 49

4. CIVIL PROCEDURE CODE, S 622

146. ———— - *Order made by* ...

147. ———— *Application where it was found an appeal lay—Application treated as appeal.*—Where an application was made for the exercise of its superintendence under s. 622 of the Civil Procedure Code, and the Court found that ...

of the time allowed for an appeal) on the proper Court-fees being paid. *Mahomed Wahiudin v. Hakiman, I. L. R., 25 Calc, 757,* referred to. SRIDHARAU SOMAYAJIPAD v. PURAMATHAN SOMAYAJIPAD . I. L. R., 23 Mad., 101

148 ———— *Delay in moving Court*—Where an auction purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere. IN THE MATTER OF THE PETITION OF DURGA PRASAD [I. L. R., 4 All., 154

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

149. ———— On the question ...

laches BALMAKUND v. SHEO JATAN LAL [I. L. R., 6 All., 125

150. ———— *Interference without application by a party to suit.*—A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to the suit. ANTHONY v. DUPONT [I. L. R., 4 Mad., 217

151. ———— *Interference without application by party to suit—Reference from District Judge.*—It is only on the application of a party interested that the High Court can act as a Court of revision under s. 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without ...

interfere MAHOMED FOYEZ CHOWDHRY v. GOLUCK DASS . . 7 C. L. R., 191

152 ———— *Revision of order of lower Court—Power of High Court, on the application of a third party—Original order passed for delivery of possession to auction-purchaser—Dispossession of auction-purchaser by a claimant—Order for registration of name of claimant—Jurisdiction of Court to re-open execution proceedings.*—On a dispute arising between two contending parties, *A* and *B*, for registration of their names, a reference was made to the District Judge under s. 55 of the Land Registration Act, and a decision was passed in favour of *A*, the petitioner, ...

application to the Subordinate Judge representing his right in and possession of the property, but the Subordinate Judge declined to take any action upon it.

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S. 622 —*continued.*

Several resistances were made to the delivery of possession to the opposite party, and several successive writs of possession were issued by the Subordinate Judge *Held* that, under the above circumstances, *A* had sufficient interest in the orders complained against to justify him in moving the Court under s. 622, Civil Procedure Code. *Semble*—Under certain circumstances, the High Court can act under

153. ———— *Case where other specific remedy exists—Bom Reg. II of 1827, s 5 Certiorari—Mandamus—Prohibition—Specific Relief Act, I of 1877 Ch VIII.*—A Divi-

themselves aggrieved by orders passed by Courts

made a mere pretext, or has been wholly misapplied, the case will be treated as one not really arising under the statute, but on an evasion or perversion of the statute, and as such subject to the general con-

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S 622 —*continued.*

principles implied in them, to such a material extent as to defeat the purpose of the law. (3) If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court in any matter committed by the Legislature to the discretion of such Court. (4) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irremediable by the regular procedure. (5) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should, in

is sought. Should other special causes appear for or against the Court's intervention, due weight is

154. ———— *Cases in which appeal lies—"Decree"—Order rejecting memoran-*

155. ———— *Civil Procedure Code, 1882, s. 381—Order dismissing suit on failure to give security for costs.*—*Held* by the Full Bench that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by

SUPERINTENDENCE OF HIGH COURT *continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code WILLIAMS v. BROWN . . I. L. R., 8 All., 108

156.——————— Order amending decree under s. 206, Civil Procedure Code, 1882—High Court's powers of revision —

That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *Per* MAHMOOD, *J.*—That an order passed under s 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s 588. Also that, in saying that by "dismissed" his predecessor meant "decreed," the Judge had altered the decree in a manner not warranted ...

... referred to. SURTA v GANGA . . . I. L. R., 7 All., 411

157.——————— *Civil Procedure Code, s. 206—Order amending decree in respect of* ...

... ing a decree under s 206 does not by itself constitute a "case" within the meaning of s 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made. *Held,* therefore, *per* OLDFIELD, *J.*, that where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s 622 of the Code. *Per* MAHMOOD, *J., contra.* RAGHUNATH DAS v. RAJ KUMAR . . . . I. L. R., 2 All., 276

Held on appeal under the Letters Patent that the alteration of the decree was improper, and was not an amendment of the kind authorized by s 206 of the Civil Procedure Code ...

the High Court under s. 622. The judgment of OLDFIELD, *J.*, reversed, and that of MAHMOOD, *J.*, affirmed. RAGHUNATH DAS v. RAJ KUMAR [I. L. R., 7 All, 876

158.——————— *Civil Procedure Code, s. 206*— ...

NARAYANASAMI v. NATESA [I. L. R., 16 Mad., 424

159.——————— *Civil Procedure Code, 1882, s. 44—Order refusing leave to join claims—Rejection of plaint.*—In a plaint filed in the Court of a Subordinate Judge, the plaintiff claimed to recover possession of a house, together with some ... under ... join ... of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the ...

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

Court was not competent to interfere in revision under s 622. BANDHAN SINGH *v.* SOLRU

[I. L. R , 8 All., 191

160. — — *Case in which no appeal lies—Calling for record in case—Per* PEARSON, *J*, OLDFIELD, *J.*, and STRAIGHT, *J.*—

Act. *Per* STUART, C.J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper. IN THE MATTER OF THE PETITION OF MUHAMMAD *v.* HUSAIN . . . I. L. R., 3 All., 203

161. ———— *Case in which*

162. ———— *Interference of High Court where no appeal lies.*—Where an appeal preferred to the District Court against an order refusing an application for execution of a decree for costs was allowed, the High Court, on a second appeal being instituted, held that no appeal lay

163. ———— *Objection to attachment of property—Objection allowed—Costs—Suit to establish right—Appeal—Refund of costs—Civil Procedure Code, 1882, ss. 244, 280,*

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

reference to s. 280 an appeal was barred by s. 283: the Court therefore would interfere under s. 622 of the Civil Procedure Code IN THE MATTER OF THE PETITION OF RAGHU NATH DAS RAGHU NATH DAS *v* BADRI PRASAD . I. L. R., 6 All., 21

164. ———— *Arbitration—Illegal procedure on arbitration—Invalid award*—Where two of five arbitrators nominated by the par-

165. ———— *Arbitration—*

CHERRY KRISTNAN NAMBUDRI

[I. L. R., 3 Mad., 68

166. ———— *Arbitration—Order setting aside award for misconduct of arbitrator.*—An order under s. 521 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under Ch. XXXVIII of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code. CHATTAR SINGH *v* LEKHRAJ SINGH . . . I. L. R., 5 All., 293

167. ———— *Arbitration—Act VIII of 1859, s 318—Award made after time*

168. ———— *Arbitration—Award—Error of procedure—Relief refused on equitable grounds.*—*R M*, party to a suit, having authorized his agent to conduct the suit, the agent consented to the case being referred to arbitration by

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

the Court. The arbitration was carried on to the knowledge and with the assent of *R M.* On an

that, under the circumstances, *R M* was not entitled to relief UNNIRAMAN *v.* CHATHAN [I. L. R., 9 Mad., 451

169. ——— *Arbitration—*

The defendants came in and objected to the award on

in the Munsif's Court and not in that of the Subordinate Judge (2) That the agreement of submission

passed thereon. The plaintiff appealed. The defen-

170. ——— *Attachment—Power to set aside order for attachment by another Court.*—No Court, other than a Court of appeal or a High Court acting under s. 622 of the Code of

——— *Commission, issue of—Civil Procedure Code, ss. 130, 387—Interlocutory orders.*—Under s. 622 of the Code of Civil Procedure, interlocutory orders passed under s 387, refusing applications for the

172. ——— *Decree, Construction of—*

modified the order of the Appellate Court accordingly. IN THE MATTER OF THE PETITION OF MUHAMMAD *v.* HUSAIN . . I. L. R., 3 All., 203

173. ——— *Decree—Order reversing refusal to set aside ex-parte decree*—After a decree had been made *ex-parte,* the defendant

would the Court interfere under s 622 of the Civil Procedure Code. AUBINASH CHUNDER MOOKERJEE *v.* MARTIN . I. L. R., 8 Calc., 832

174. ——— *Discretion, Interference with exercise of—Collector—Hereditary Offices Act (Bom.) III of 1874, s. 10—Collector's certificate.*—The Collector, when granting a certificate under s. 10 of the Bombay Hereditary Offices Act (III of 1874), exercises a judicial function, and is subject to the supervision of the High Court, but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part. COLLECTOR OF THANA *v.* BHASKAR MAHADEV SHETH [I. L. R., 8 Bom., 264

175. ——— *Suit for arrears of rent—Decision of Collector on appeal from Assistant Collector—N.-W. P. Rent Act (XII of*

176. ——— *Discretion, Interference with exercise of—Refusal to grant certificate of sale under Madras Rent Recovery Act—Civil Procedure Code, 1852, s. 4.*—A sale of the

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

MOIDIN PADSHA RAVUTHAN [I. L. R., 9 Mad., 332

177. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 10 and 76.*—The defendant in a suit under the Madras Rent Recovery Act was evicted in pursuance of

s. 622. APPANDAI *v.* SRIHARI JOISHI [I. L. R., 16 Mad., 451

178. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 76.*—Orders passed by a Collector under the Madras Rent Recovery Act are not open to revision under s. 622 of the Civil Procedure Code. *Velli Periya Mira* v. *Moidin Padsha, I. L. R., 9 Mad., 332*, followed. VENKATANARASIMHA NAIDU *v.* SUBANNA [I. L. R., 17 Mad., 298

179. ——— *Discretion, Interference with exercise of—Admission by District Court of appeal presented out of time.*—Where a

CHINNASAMI . . I. L. R., 7 Mad., 584

180. ——— *Error in law —Civil Procedure Code, 1882, s 32—Interpleader suit, Application to be made a party to—Power of High Court on revision—Erroneous construction of Act.*—A merely erroneous construction of the provisions of an Act is not a ground for relief under s. 622 of the Civil Procedure Code. *M J* instituted an interpleader suit against two rival claimants, *N* and *A*, in respect of a sum of R20 000 *R* subsequently claimed a portion of the money and applied to be made a party to the suit, but was opposed by *M J* and *N*. The Subordinate Judge refused the application, on the ground that, though it

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

KHANUM *v.* NOORJEHAN BEGUM *alias* DALIM SHAHIBA . . . I. L. R., 13 Calc., 90

181. ——— *Error in law—Dismissal of suit by Small Cause Court—Legal*

[I. L. R., 9 Mad., 375

182. ——— *Error of law—*

183. ——— *Court acting without jurisdiction—Suit for rent entertained by Small Cause Court under erroneous impression it was due under a contract.*—A Small Cause Court, which had jurisdiction under Act XI of 1865 to entertain suits for rent only where the claim was founded on contract, erroneously assumed that a subtenant, by entering on land with notice that his lessor was bound to pay rent to the landlord, became liable by an implied contract to pay the rent to the landlord, and passed a decree against the subtenant for the rent in arrears. *Held* that, under s. 622 of the Code of Civil Procedure, the High Court had power to set aside the decree. *Amir Hassan Khan* v *Sheo Baksh Singh, I. L. R., 11 Calc., 6*, discussed and explained. MANISHA ERADI *v.* SIYALI KOYA . . I. L. R., 11 Mad., 220

184. ——— *Material irregularity—Small Cause Court, Motion for new*

on three or four subsequent occasions, *L M & Co.* refused to deliver, on the ground that they had till the 31st May for delivery. On the 15th May *L M & Co.* failed, and then, but not before, plaintiffs informed the defendant that they had not had delivery from *L M & Co.*, and demanded it of him. The defendant failing to deliver, the plaintiffs sued for damages as of the 31st May. The learned Judge of the Small Cause Court, on this statement of

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622
—*continued.*

accepted judgment for nominal damages, and took out a rule for a new trial, on the ground that the Judge was in error in assigning the 25th April, and not the 31st May, as the date which ruled

the case, and the state of the record, the Full Court had acted with material irregularity within the meaning of s 622 of the Civil Procedure Code, and that the case must be remanded to be dealt with according to law RALLI *v.* PARMANAND JEWRAJ

[I. L. R., 13 Bom., 642

185. ———— *Execution of decree—Application for execution of decree—Civil Procedure Code, 1877, s 244—Registration Act, 1866, s. 53.*—An application was made to a District Munsif on the 16th July 1877 to issue execution on a decree, dated 6th November 1869, obtained on a bond registered under s. 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by art. 166, sch. II, Act IX of 1871. On appeal the Sub-

1871,

1877,

ordi-

peal.

401

186. ———— *Execution of decree—Civil Procedure Code, 1882, s. 335—Resistance to execution of decree.*—An order under s. 335 of the Civil Procedure Code is subject to revision by the High Court under s. 622 of that Code. *Shiva Nathaji v. Joma Kashinath, I. L. R., 7 Bom., 341,* followed SHEORAJ SINGH *v.* BANWARI DAS . . . . I. L. R., 6 All., 172

187. ———— *Order for possession on application by usufructuary mortgagee ejected by auction-purchaser to be restored to possession—Civil Procedure Code (1882), s. 335.*—

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622
—*continued.*

In a suit for sale upon a mortgage the plaintiff, having obtained a decree, assigned the same, and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his

v. SRI GOPAL

188. ———— *Jurisdiction, Exercise of—Erroneous decision in suit tried with jurisdiction—Act XII of 1879, s 92.*—A Court that has decided a suit over which it had jurisdiction cannot, only on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally, or with material irregularity, within the meaning of s. 622 of Act X of 1877, as amended by s. 92 of Act XII of 1879 AMIR HASSAN KHAN *v* SHEO BAKSH SINGH

[I. L. R., 11 Calc., 6 : L. R., 11 I. A., 237

189. ———— *Discretion of Court exercised with jurisdiction*—S 622 of the Code is one of very limited operation; and where a lower Court has jurisdiction to decide a question of law or fact, the High Court has no power to interfere on revision with the decision on those questions. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* followed. KRISHNA MOHINI DOSSEE *v.* KEDARNATH CHUCKERBUTTY

[I. L. R., 15 Calc., 446

190. ———— *Decision by competent Court.*—A decision by the judgment of a competent Court, whether right or wrong, which by law is final and without appeal, where the Court has not acted in the exercise of its jurisdiction illegally, or with material irregularity, cannot be set aside under s. 622 of the Civil Procedure Code MUHAMMAD YUSUF KHAN *v.* ABDUL RAHMAN KHAN . . I. L. R., 16 Calc., 749

[L. R., 16 I. A., 104

191. ———— *Jurisdiction, Interference with exercise of—Civil Procedure Code, 1882, s. 320—Transfer of decree to Collector for execution—Rules made by Local Government*—A decree passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

the Collec
sale Up
to the Su
a larger

and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. The Court held that the Subordinate Judge had jurisdiction to decide the question. *Held* that, inasmuch as the Subordinate Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong, the purchaser had a remedy by bringing a regular suit, the matter did not fall within s 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision *Shivanathaji v. Joma Kashinath, I L R., 7 Bom., 341,* and *Amir Hassan Khan v Sheo Baksh Singh, I. L R., 11 Calc., 6,* referred to SUNDAR DAS v MANSA RAM . . . . I. L. R., 7 All., 407

192. ———————— *Jurisdiction, Interference with exercise of—Limitation*—A Court which admits an application to set aside a

All., 336, commented on by MAHMOOD, J. *Per*

tions imposed by the law upon the judicial authority HAR PRASAD v JAFAR ALI . I. L. R , 7 All., 345

193. ———————— *Erroneous decision on point of limitation.*—The fact that a Court having power to decide whether or not a certain matter was barred by limitation wrongly decided that it was not barred, and proceeded to deal with it, affords no ground for revision under s. 622 of the Code of Civil Procedure. *Amir Hassan Khan v Sheo Baksh Singh, I L. R , 11 Calc , 6 L R , 11 I. A., 237,* and *Sarman Lal v Khuban, I L. R , 17 All , 422,* referred to SUNDAR SINGH v. DORU SHANKAR . I. L. R., 20 All., 78

194. ———————— Where the lower

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

Semble—In dealing with a case under s 622 the High Court can look into the evidence and itself investigate the facts. KAILASH CHANDRA HALDAR v. BISSONATH PARAMANIO . . 1 C. W. N., 67

195. ———————— *Jurisdiction, Question not relating to—Alleged errors in decision of suit for pre-emption.*—In a suit to enforce the

instance gave the plaintiffs a decree for possession of the property, on payment of an amount less than that mentioned in the deed; and this decree was

tion whether, such grounds not being grounds on which a second appeal is allowed by Ch XLII of the Civil Procedure Code, the appeal should not proceed rather under Ch XLVI, s 622, of that Code, that the appeal could not proceed under s. 622 of the Civil Procedure Code, in consequence of the decision of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh, I. L R., 11 Calc., 6,* that only questions relating to the jurisdiction of the Court could be entertained under that section MAGNI RAM v JIWA LAL . I. L. R., 7 All., 336

196. ———————— *Jurisdiction, Interference with exercise of—Second class Subordinate Judge—Subject-matter of suit under R5,000 and within jurisdiction—Amount of decree with accumulations of interest exceeding R5 000—Application for execution—Second appeal*—The plaintiffs obtained a decree in the Court of a second

Act XIV of 1869 On appeal the District Judge
made a
ordinate
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to the

continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

actually due by process of accumulation exceeded R5,000 could not oust him from the jurisdiction he hitherto had over the suit. SHAMRAV PANDOJI *v.* NILOJI RAMAJI . . I. L. R., 10 Bom., 200

197. ——— *Jurisdiction, Interference with exercise of—Error of Mamlatdar—Possessory suit in a Mamlatdar's Court.*— [illegible]

and the opponents were put into possession. Thereupon the applicants, on the 19th May 1884, presented a petition in the Mamlatdar's Court, under s. 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands and had been ousted from them in execution of the decree, and praying that they might be again put into possession The Mamlatdar was of opinion that the matter was *res judicata,* and dismissed the petition. He relied on a circular of the Executive Government as his authority. The applicants applied to the High Court under its extraordinary jurisdiction. *Held* that it was not a case for the exercise of the extraordinary jurisdiction of the High Court The Mamlatdar was no doubt guilty of a formal error. In the exercise [illegible]

This, however, was merely an irregularity on the part of the [illegible]
injustice to [illegible]
on their title [illegible]
PANDURANG [illegible]

198. ——— *Jurisdiction, Interference with exercise of—Civil Procedure Code, 1882, s. 315.*—Where an order was passed under s. 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court,—*Held* [illegible]
Procedure the [illegible]
because, the [illegible]
have a saleal [illegible]
power to order a refund KUNHAMED *v.* CHATHU [I. L. R., 9 Mad., 437

199. ——— *Jurisdiction, Interference with exercise of—Excess of jurisdiction—Arbitrators exceeding jurisdiction.*—In any case where there is a disregard of the law amounting [illegible]

200. ——— *Judge putting erroneous construction on section of Act—Civil Procedure Code, 1882, s. 329.*—Where a Judge took an erroneous view of s. 329 of the Civil Procedure Code, and proceeded on such erroneous construction to make orders which on a proper construction of the section he would have no jurisdiction to make,—*Held* that it was a proper case for the exercise of the powers given to the High Court under s 622 of the Code. SALAMVA *v.* MARTYAVA [I. L. R., 16 Bom., 711 note

See also VISHVAMBHAR PANDIT *v.* VASUDEV PANDIT . . . . I. L. R., 16 Bom., 708

a case where his erroneous construction of s. 9 of Bombay Regulation VIII of 1827 resulted in similar action being taken by a Judge.

201. ——— *Jurisdiction, Interference with exercise of—Civil Procedure Code, 1882, s. 492—Civil Procedure Code, 1859, s. 92—Injunction to stay sale pending suit to establish title*—A claim by *K* to certain property which had been attached by *B* in the course of execution-pro- [illegible] instituted [illegible]

jurisdiction, and should be set aside. IN THE MATTER OF THE PETITION OF BROJENDRA KUMAR RAI CHOWDHURI. BROJENDRA KUMAR RAI CHOWDHURI *v.* RUP LALL DOSS . . I. L. R., 12 Calc., 515

202. ——— *Jurisdiction—Sale set aside on account of irregularity only.*— [illegible] of the [illegible]

meaning of s. 622 of the said Code. LAKSHMANA *v.* NAJIMUDIN . . . I. L. R., 9 Mad., 145

203. ——— *Sale in execution of decree set aside—Material irregularity*—

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

Inadequacy of price—Exercise of jurisdiction by District Judge.—A judgment-debtor applied to have

appeal the District Judge, while agreeing with the

tion GOPAL KOERI *v.* GOPI LAL I. L. R., 21 Calc., 799

204. ——— *Jurisdiction, Interference with exercise of—Possession given to purchaser*—

ment-debtor—

been attache

Court, *S*,

order of the High Court, having subsequently put the purchaser in possession of the land, *S* applied for restitution, but his petition was rejected by the District Judge In an application under s. 622 of the Civil Procedure Code to revise the Judge's order,

no power to restore possession to S. The High Court therefore could not interfere under s. 622. The remedy of *S* was by a separate suit SUBBAYA *v* YALLAMMA . . . I. L. R., 9 Mad., 130

205. ——— *Jurisdiction, Interference with exercise of—Trial of case cognizable only by Small Cause Court.*—*S* instituted a suit against *T* in the Court of an Assistant Collector of the first class, who dismissed the suit. On appeal by *S* the District Court gave her a decree On second appeal by *T* the High Court held that, as the suit was one of the nature cognizable in a Court of Small

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

High Court was competent to entertain such application and to quash the proceedings of both the lower Courts, under the provisions of s. 622 of Act X of 1877, and the proceedings of both those Courts should be quashed. Observations by STUART, *C J*, on the powers of revision of the High Court under s 622 of Act X of 1877 SARNAM TEWARI *v* SAKINA BIBI [I. L. R., 3 All., 417

206. ——— *Jurisdiction, Interference with exercise of—Beng. Reg XVII of 1806—Redemption of mortgage*—After a mortgage had been foreclosed under the provisions of Regulation XVII of 1806, the representative of the mort-

ordered the mortgagee, who was in possession of the mortgaged property under the terms of the mortgage, to surrender the property The mortgagee applied to the High Court to revise these orders under s 622 of Act X of 1877 *Held* that the application was entertainable under the provisions of that section, and that the orders of the District Judge were made without jurisdiction and should be set aside HAZARI LAL *v* KHERU RAI I. L. R., 3 All., 576

207. ——— *Jurisdiction, Interference with exercise of—Improper refusal of jurisdiction.*—Where a Munsif improperly refused

208. ——— *Appeal against appellate decree by party to suit who did not appeal*

to recover the debt by sale of the land mortgaged, mesne profits from *V*, and costs from *S*, *V*, and *C*.

held that, even if the debt had not been paid, *K* had

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

no cause of action against *V* or *S*, but, if at all, against *C*, and dismissed the suit as against *V*. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against *S*, and saw no reason to interfere with the decree against *C* *S* appealed against this decree. *Held* that, even if *S* was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under s. 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by s. 544 of the said Code SESHADRI *v* KRISHNAN . I. L. R., 8 Mad., 192

209. ——— *Jurisdiction, Interference with exercise of—Act XL of 1858*

cate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. Where a Subordinate Judge had so acted,—*Held* that the High Court has no power to revise his order under s 622 of the Civil Procedure Code BALDEO DAS *v.* GOBIND SHANKAR . I. L. R., 7 All., 914

210. ——— *Jurisdiction, Interference with exercise of—Decree, Refusal to amend*—Where a Court improperly refused to amend a decree which was at variance with the judgment, —*Held* that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. BALMAKUND *v* SHEOJATAN LAL I. L. R., 6 All., 125

211. ——— *Jurisdiction, Interference with exercise of—Material irregularity affecting merits of case.*—The words "a material irregularity" in s. 622 of the Code of Civil Procedure include an irregularity of procedure mate-

7 *All.*, 336, observed on. SEW BUX BOGLA *v.* SHIB CHUNDER SEN . I. L. R., 13 Calc., 225

212. ——— *Jurisdiction, Interference with exercise of—"Illegality"—"Material irregularity."*—A suit was instituted in the Court of a Munsif to recover from the defendants a

question of her heirship to the estate of a certain deceased person, and that consequently the case before him raised a question affecting the title to property exceeding R1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly returned the plaint for presentation to the proper Court under s 57 of the Civil Procedure Code. *Held* by the Full Bench, that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the R49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under s. 622 of the Civil Procedure Code. The result of *Amir Hassan v. Sheo Baksh Singh, I L. R., 11 Calc., 6*, and *Magni Ram v. Jiwa Lal, I. L.*

that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the force of law, or failed to determine some material issue of law or usage. Cl. (*c*) of s. 584 indicates the meaning of the words "material irregularity" in s. 622,—*i e.*, some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits." *Muhammad v Husain, I. L. R., 3 All., 203*, referred to. BADAMI KUAR *v.* DINU RAI [I. L. R., 8 All., 111

213. ——— *Jurisdiction, Interference with exercise of—Meaning of "jurisdiction"—Amendment of decree—Civil Procedure Code, s. 206—Act XV of 1877, sch. II, No. 178.*—

fective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an

had acted beyond its jurisdiction in amending it. *Held* that the application for revision must be rejected. *Per* OLDFIELD, J., that the High Court had no power to entertain the application under s 622 of the Civil Procedure Code with reference to the decision of the Privy Council in *Amir Hassan*

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S. 622 —*continued.*

Khan v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* and of the Full Bench in *Badami Kuar* v. *Dinu Rai, I. L. R , 8 All , 111,* and further that, upon the facts stated, the Court ought not to interfere. *Per* MAHMOOD, *J.*, that the Court was not precluded from entertaining the application for revision under s. 622 of the Civil Procedure Code *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L R., 11 Calc., 6, Badami Kuar* v. *Dinu Rai, I. L R , 8 All , 111, Raghunath Das* v. *Raj Kumar, I. L. R , 7 All., 876; Surta* v. *Ganga, I L R., 7 All , 411 , Mogni Ram* v. *Jiwa Lal, I. L R., 7 All., 336 , Har Prasad* v. *Jaf*—

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the powers of a Court or to the nature of the

conditions referred to In framing the section, the Legislature gave to the High Court power to interfere with the action of subordinate tribunals in cases where there is no remedy, either by appeal or otherwise, and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power and the jurisdiction which the law confers upon them, or, under the pretence of exercising such authority, power and jurisdiction, have acted against a positive prohibition of the law. *Combe* v *Edwards L. R , 3 P D , 103,* and *Crepps* v. *Durden, 1 Smith's L C , 8th Ed., 711,* referred to. *Held* also *per* MAHMOOD, *J.*, that in the present case the Court below had jurisdiction to entertain

214. ——————————*Dismissal of suit*

without joining the representatives of the deceased partner as co-plaintiff *Held* that it was the Judge's duty to hear and determine the suit which was brought by the person legally entitled to bring it alone in his Court, and in declining to entertain it on the merits he had failed to exercise his jurisdiction, and had acted with material irregularity within the meaning of s 622 of the Civil Procedure Code.

will be done. GOBIND PRASAD *v.* CHANDAR SEKHAR [I. L. R , 9 All., 486

215. —————————— *Failure to exercise jurisdiction* —Where a Subordinate Judge wrongly held that a suit was one of the nature contemplated by s. 539 of the Civil Procedure Code, and returned the plaint for presentation to the District Judge,—*Held that the High Court had power,* under s 622 of the Code, to interfere, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law VISHVANATH GOVIND DESHMANE *v* RAMBHAT I. L. R., 15 Bom., 148

216. —————————— *Jurisdiction, Interference with exercise of—Alleged irregularity by District Judge in decision of suits* —*A* and *B*, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed R100. After the institution of the rent suits, *A* sued *B* to establish his title to the land in dispute. The District Judge before whom the rent suits came on appeal allowed them to stand over until the decision in the suit between *A* and *B* That suit was decided in favour of *B*, and the Judge then decided the rent suits instituted by *B* in his favour, and dismissed the suits instituted by *A*. *Held* that there was no such

DOORGA NARAIN SEN *v.* RAM LALL CHHUTAR [I. L. R., 7 Calc , 330

S C. DURGA NARAIN MISSER *v* GOBURDHUN GHOSE . . 9 C. L. R., 86

217. —————————— *Jurisdiction, Interference with exercise of—Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate—Order releasing property from attachment.*—In 1862 a

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit: this objection was overruled, but the same

[illegible]

of the plaintiffs appealed, but pending the appeal

[illegible]

Lahiry *v.* Nil Comul Lahiry [I. L. R., 11 Calc., 45

218. ———— *Jurisdiction,*

[illegible]

against a debtor of their deceased husband, the High Court declined to interfere under s. 622 of the Code of Civil Procedure. Lingammal *v.* Chinna Venkatammal . . I. L. R., 6 Mad., 227

219. ———— *Jurisdiction, Interference with exercise of—Death of sole defendant—Application to add representative.*—In a suit

[illegible]

Court would take cognizance of the case under s. 622 of the Civil Procedure Code. Benode Mohini Chowdhrain *v* Sharat Chunder Dey Chowdhry [I. L. R., 8 Calc., 837 10 C. L. R., 449; 12 C. L. R., 421

220. ———— *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record—Civil Procedure Code, s. 244.*—A decree of the High Court, giving possession of certain shares in a bank to the plaintiff *R*, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first

[illegible]

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

[illegible]

purchaser for value. The Court passed an order directing that *G*'s name should be placed on the record, so that the decree might be executed against him. *Held* that the application by *R* was meant to be

[illegible]

it, being appealable under s. 588 (21), was not open to revision by the High Court under s. 622. Rattos *v.* Mussoorie Bank . I. L. R., 7 All., 681

221. ———— *Act XX of 1863, s. 18—Order refusing permission to sue.*—An order passed under s. 18 of Act XX of 1863, refusing leave to sue, is not appealable, nor, if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure. In re Venkateswara . . . . I. L. R., 10 Mad., 98

See Anonymous . I. L. R., 10 Mad., 98 note

222. ———— *Revision of interlocutory order when appeal lies from final decree—Power of High Court.*—There is nothing in s. 622 of the Code which prevents the High Court from setting aside an interlocutory order if made without jurisdiction. The word "case" in that section is wide enough to include such an order, and the words

[illegible]

[I. L. R., 14 Calc., 768

223 ———— *Application and purpose of s. 622—Civil Procedure Code (1882), s 591—Interlocutory orders.*—An application under s. 622 of the Civil Procedure Code cannot be enter-

[illegible]

framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

where there would otherwise be no remedy MOTILAL KASHIBHAI v. NANA . I. L. R., 18 Bom., 35

224. ———— *Interlocutory order—Rejection of application to appeal as a pauper*.—An application for permission to appeal as a

225. ———— *Rejection of*

226. ———— *Rejection of application to sue in formâ pauperis—"Right to*

strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of justice; and an exercise of jurisdiction under that section when such exercise of jurisdiction is open

323, referred to. CHATTARPAL SINGH v. RAJA RAM [I. L. R., 7 All., 661

227. ———— *Res judicata, Erroneous decision on*.—A wrong decision on a

228. ———— *High Court's power of revision—Res judicata—Jurisdiction, Meaning of the term.*—The plaintiff sued the defendant to recover arrears of an annual allowance to which the plaintiff claimed to be entitled under a sanad dated 1846. The defendant in his defence raised certain points most of which he had raised in a previous suit brought against him by the plaintiff for the recovery of arrears of the same allowance, and which in that suit had been decided against him. The lower Court held that the decision in the former suit operated as *res judicata*, and refused to allow the defendant to put forward any new matter which might and ought to have been urged as a defence in the former suit. A decree was made in favour of the plaintiff. The defendant applied to the High Court, under s. 622 of the Civil Procedure Code (Act XIV of 1882). *Held*, following *Hari Bhikaji* v. *Naro Vishvanath, I. L. R., 9 Bom., 432*, that the decision, even though wrong, of a question of *res judicata* was not a failure, or a cause of failure, to exercise jurisdiction and did not warrant the interference of the High Court under s. 622 of the Civil Procedure Code. AMRITRAV KRISHNA DESPANDE v. BALKRISHNA GANESH AMRAPURKAR I. L. R., 11 Bom., 488

229. ———— *Sale in execution of decree—Fraud—Setting aside order confirming sale.*—The purchaser at a sale by public auction succeeded, by the exercise of fraud and collusion with the agent of the execution-creditors (though without the creditors' personal knowledge), in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the High Court had power, under s. 622 of Act X of 1877, to rescind the order made by the Court of first instance confirming the sale. SUBBAJI RAU v. SRINIVASA RAU [I. L. R., 2 Mad., 264

230. ———— *Sale in execution of decree—Pre-emption—Civil Procedure Code, 1877, ss. 310, 311—Locus standi of pre-emptor in execution proceedings.*—A person claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

decree, objected to the confirmation of the sale in favour of the person recorded as the auction-pur-

entertain the application under s. 622 of the Code, but that, as he was not one of the persons who was

231. ——— *Distribution of*

TAMBALA CHETTI *v.* SESHAYYANGAR [I. L. R., 4 Mad., 383

232 ——— *Execution proceedings—Rateable distribution—Application for further execution—Notice.*—*A* and subsequently *B* obtained decrees against *X*, in execution of which the same land was attached, and *B* obtained an order for rateable distribution. Neither decree was satisfied. *A* then applied for attachment of other

that the High Court could not, under s 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. VENKATARAMAN *v.* MAHALINGAYYAN [I. L. R., 9 Mad., 508

233. ——— *Failure to exer-*

already attached property of the insolvent and had

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

obtained an order for sale in a District Court, and

Held that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code, the Judge having failed to exercise a jurisdiction vested in him by law. VIRARAGHAVA *v.* PARASURAMA [I. L. R., 15 Mad., 372

234. ——— *Sanction for prosecution—Act X of 1872 (Criminal Procedure Code), ss. 468, 469.*—The discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X of 1877. IN THE MATTER OF THE PETITION OF MADHO PRASAD . . I. L. R., 3 All., 508

235. ——— *Power of revision over Small Cause Court, Calcutta—Alleged excess of jurisdiction by Small Cause Court—Trespass to immoveable property.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession. The defendant contended that such a suit was one for the determination of a right to or interest in immoveable property, and was therefore not maintainable in the Small Cause Court. The Small Cause Court decided the case, and the High Court, on an application under s. 622, granted a rule to show cause why the judgment should not be set aside as being without jurisdiction. *Held*, on such application, that the Court had jurisdiction to entertain such a suit PEARY MOHUN GHOSAUL *v.* HARRAY CHUNDER GANGOOLY . I. L. R., 11 Calc., 261

236. ——— *Civil Procedure Code, 1882, s 43—Cause of action—Splitting a claim—Separate suits for rent due for successive years*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the

-ent of the first Code of Civil -laim ought to second year's s 622 to the that although

s 43 did prevent the maintenance of the two suits, yet as the petitioners had no intention of abandoning either claim, the proper course was to allow them

SUPERINTENDENCE OF HIGH COURT—*continued.*

14. CIVIL PROCEDURE CODE, S. 622 —*continued.*

to withdraw both suits and file a fresh suit in a competent Court ALAGU *v.* ABDOOLA [I. L. R., 8 Mad., 147

237. ——— *Civil Procedure Code, s. 25, Order under, for transfer of suit.*—

MUHAMMAD SAYDAR HUSEN *v.* PURAN CHAND [I. L. R., 20 All., 395

238. ——— *Court Fees Act, 1870, s. 6, and sch. II, art. 17 (1)—Stamp—Valuation by subordinate Court—Practice—Civil Procedure Code (Act XIV of 1882), s. 622, and Bom. Reg. II of 1827, s. 5.*—A decision by a subordinate Court

239. ——— *Order dismiss-*

240. ——— *Order made without jurisdiction under Act XIX of 1841, ss. 3 and 4.*—Where a District Court, purporting to act

jurisdiction ABDUL RAHIMAN *v.* KUTTI AHMED [I. L. R., 10 Mad., 68

241. ——— *Act XIX of 1841, ss 2, 3, 5, 15—Order of District Court on petition by Court of Wards.*—On a petition presented by the Agent of the Court of Wards, a District Court made an order which purported to have been made under Act XIX of 1841, s. 5. The conditions prescribed by ss. 3 and 4 were not shown to exist. *Held* the order of the District Court was illegal, and was subject to revision under s. 622 of the Code of Civil Procedure. PAPAMMA *v.* COLLECTOR OF GODAVARI . I. L. R., 12 Mad., 341

242. ——— *Bengal Tenancy Act (VIII of 1885), ss 104, cl. 2, 105, 106, 108—Rule 33 of the rules made under the Act—*

Court has no jurisdiction either to entertain a second

243. ——— *Bengal Tenancy Act (VIII of 1885), s. 174—Deposit, Nature of—Jurisdiction—Application under s 622 of the Civil Procedure Code.*—The deposit under s. 174 of the Tenancy Act must be of such a nature as to be at

auction-purchaser gave the judgment-debtor the benefit of s 174 and set aside the sale, the High Court set aside such order under s 622 of the Civil Procedure Code. RAHIM BUX *v.* NUNDO LAL GOSSAMI . I. L. R., 14 Calc., 321

244. ——— *Bengal Tenancy Act (VIII of 1885), s 188—Suit for rent—Co-sharers, Suit by—Joint undivided estate—Jurisdiction — Civil Procedure Code (Act XIV of 1882), s 622.* — A District Judge, in deciding a rent-suit, held that s 188 of the Bengal Tenancy Act prohibited the Court from entertaining the suit in the form in which it had been framed, and

followed.
I L. R.,
tinguished.
ALKUSHI

245 ——— *High Court's power of interference with order of Special Judge — Rules under Bengal Tenancy Act, Ch VI, No. 25—Power of Local Government to make the rule—Bengal Tenancy Act, ss 104, 108, and 189.*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision making all or nearly

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by

Shewbarat Koer v. Nirpat Roy, I. L. R., 16 Calc., 596, dissented from. (2) That the Local Government acted within the powers conferred by s. 189, cl. 1, of the Bengal Tenancy Act, in making rule 25 of Ch. VI of the Government rules under the Act, by which a landlord is authorized to join as defendants several tenants in one application for settlement of rents UPADHYA THAKUR *v.* PERSIDH SINGH . . . I. L. R., 23 Calc., 723

248. —

Tenancy Act, and rule 1, Ch. VI of the Government rules under the Tenancy Act, to act as he had done, and that therefore, in holding that no appeal lay to him, the Special Judge had not refrained from exercising any jurisdiction which he ought to have exercised. IRSHAD ALI CHOWDHRY *v.* KANTA PERSHAD HAZAREE . . I. L. R., 21 Calc, 935

247. ——— *Special Judge, Discretion of—Dekkan Agriculturists' Relief Act (XVII of 1879)—Finding of fact.*—When the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion except under most exceptional circumstances RAYACHAND MAYACHAND *v.* RAHIMBHAI . . . . I. L. R., 18 Bom., 347

248. —

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

jurisdiction to interfere only where the lower Court acts without jurisdiction or has exercised its jurisdiction "illegally or with material irregularity." Under s. 53 of the Dekkan Agriculturists' Relief Act (XVII of 1879), the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him

BASAYA *v.* CHANMALAPPA [I. L. R., 19 Bom., 286

249. ——— *Mamlatdars' Courts Act (Bom Act III of 1876), s. 15, cl (a), subcls. (1) and (2), s. 18—Execution of decree for possession against a third party—Jurisdiction of Mamlatdar.*—*A* obtained an order in a Mamlatdar's Court against *G* for possession of a house, and in execution *N*, who was found in possession of the house and who was reported by the village officers as holding possession for *G*, was evicted by order of the Mamlatdar. *N* then applied to the High Court. *Held* that the Mamlatdar's order was, strictly

ALLI . . . . I. L. R., 18 Bom., ...

250. ——— *Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal by Mamlatdar to order execution of decree—Questions of fact.*—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain

had been tendered to the applicant, but had been

and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Act (Bombay Act III of

to further the execution of an irregular decree, especially as the applicant had a clear remedy

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

by suit RAMRAO TATYAJI PATIL *v.* BABAJI DHONDJI BIBVE . . I. L. R., 20 Bom., 630

251. ——————— *Mamlatdar, Jurisdiction of*—The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired. The Mamlatdar found the execution of the lease proved, but held it to be

252. ——————— *Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Mamlatdar acting without jurisdiction.*—*G* got a decree for possession against *P* in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of *P*, who was in possession, and who was not a party to the decree. *Held* that the Mamlatdar's order for the execution of the decree by the ouster of *P* was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code (Act XIV of 1882). CHINAYA *v.* GANGAYA [I. L. R., 21 Bom., 775

253. ——————— *Order of District Judge acting under Bombay District Municipal Act (Bom. Act II of 1884), s. 23—Application to set aside a Municipal election—Order made as to costs—"Court," Meaning of.*—A District Judge acting under s 23 of the

254. ——————— *Revision—*

SUPERINTENDENCE OF HIGH COURT—*continued*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

ment, as well as in his deposition, admitted execution of the bonds in question, but pleaded non-receipt of the consideration. The Subordinate Judge held that the bond for R200 was not proved, but awarded the claim upon the other bond On appeal, one of the issues raised by the Assistant Judge was—are the bonds in suit proved ? He held that the plaintiffs had failed to prove execution of the bonds, and dismissed the claim *in toto*.

VITHAL NARAYAN JOSHI [I. L. R., 11 Bom., 435

255.——————— *Passing decree unsupported by proof—High Court's powers of revision—Bailment—Negligence*—A Judge has no jurisdiction to pass, in a contested suit, a decree

that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

shifted by the explanation which he gave and which was neither contradicted nor *primâ facie* improbable; and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s. 622 of the Civil Procedure Code. *Per* BRODHURST, *J.*, that as the decree was not only unsupported by proof, but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s 622 *Collins* v. *Bennett, 46 New York Rep.*, *Byrne* v. *Boadle, 2 H. and C., 722*; *Gee* v. *Metropolitan Railway Company, L. R., 8 Q. B., 161*, *Scott* v. *London Dock Company, 3 H. & C. 596*, *Manzoni* v. *Douglas, 6 Q. B. D., 145*, *Cotton* v. *Wood, 8 C. B. N. S., 569*, *Davey* v. *London and South Western Railway Company, 12 Q. B. D., 70*, and *Hammack* v. *White, 11 C. B N S, 588*, referred to SHIELDS v. WILKINSON

I. L. R., 9 All., 398

256.————— *Civil Procedure Code, 1882, s. 516—Material irregularity—Omission to give notice of proceedings*—A District Munsif passed a decree in the terms of an award

...

Procedure RANGASAMI v MUTTUSAMI

I. L. R., 11 Mad., 144

257.————— *Civil Procedure*

...

for revision of a decree based upon an award filed in Court that no notice of the filing of the award was

...

CHATARBUJ DAS v. GANESH RAM

I. L. R., 20 All., 474

258.————— *Error of law—Material irregularity—Personal decree against minors for debt of deceased Hindu father.*—In a

...

259.————— *Civil Procedure Code, s. 373—Leave given by District Court on appeal to withdraw suit—Material irregularity.*—A District Munsif having dismissed a suit, plaintiff

...

under s. 622 of the Code of Civil Procedure, that the District Court had acted with material irregularity. TIRUPATI v. MUTTA . I. L. R., 11 Mad., 322

260.————— *Immoveable property—Right of fishery—Possession—Dispossession—Specific Relief Act, I of 1877, s 9—Civil Procedure Code (Act XIV of 1882), ss. 30 and 622—Objection under s. 30 where suit is under s 9 of Specific Relief Act.*—The plaintiffs were fishermen

...

I. L. R., 12 Bom., 221

261.————— *Jurisdiction, Presumption of—Maxim, omnia præsumuntur rite et solemniter esse acta—Civil Procedure Code, ss. 103, 283, 647*—The consideration of an objection under s 278 of the Civil Procedure Code, having first been entertained and adjourned by an Additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off the case for default.

...

of the petitioner was an application under s 103,

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

read with s 647, or a suit under s. 283, and that the High Court should not interfere in revision. SHEO PRASAD SINGH *v.* KASTURA KUAR

[I. L. R., 10 All., 119

262. ——————— *Limitation—High Court's revisional powers—Material irregularity*—On the 29th November 1886 this suit was filed on a bond dated the 29th November 1881, payable in two years The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November 1883. [illegible]

by time, the cause of action having accrued on the 29th November 1883, that is, the day of the month corresponding with the day on which the bond was dated. *Held* further that, the decision of the [illegible]

a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact, in its decision of any such questions with which it has jurisdiction to deal, its [illegible]

remedy there may be, in the Bombay Presidency, under cl. 2 of s. 5 of Regulation II of 1827 But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue, proceeds to determine an issue, which does not really arise in the case, and bases its decision of the case on its determination of that issue If it does so, it acts with material irregularity in the exercise of its jurisdiction VENKUBAI *v* LAKSHMAN VENKOBA KHOT I. L. R., 12 Bom., 617

263. ——————— *Orders in pauper suit—Civil Procedure Code, s 407.*—All orders passed under s. 407 of the Code of Civil Procedure are not excluded from the exercise of the revisional [illegible]

whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order MUHAMMAD HUSAIN *v.* AJUDHIA PRASAD

[I. L. R., 10 All., 467

264. ——————— *Pauper suit—Costs of plaintiff—Right of appeal—Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree.*—The plaintiff's suit *in formâ pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable in the plaint. The Collector applied to the High Court under its extraordinary [illegible]

of Ratnagiri v. *Janardan, I L. R., 6 Bom.,* *590,* that no appeal by Government would lie in the case, and that in the exercise of [illegible]

[I. L. R, 18 Bom, 454

265. ——————— *Civil Procedure Code, ss 494, 588—Appeal against order for issue* [illegible]

subordinate Court. The Judge refused to pass orders on it without hearing the defendants, and ordered notice to issue to them. The plaintiff appealed to the District Judge, who granted the injunction prayed for *Held* that no appeal lay from the subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law LUIS *v* LUIS

[I. L. R., 12 Mad., 133

266. ——————— *Civil Procedure Code (Act XIV of 1882), s 412—Dismissal of suit in formâ pauperis without trial—Liability of plaintiff for Court-fee*—A plaintiff who sues *in formâ pauperis* is liable to pay the [illegible]

[illegible] Mad., 11[illegible]

267. ——————— *Civil Procedure Code, s. 269—Order on appeal* [illegible] *granting application for review of judgment.*—The High Court will not, in the exercise of its revisional powers under s. 622 of the Civil Procedure [illegible] with an order dismissing an appeal [illegible] under s. 629, inasmuch as there [illegible] remedy [illegible] way of appeal from the [illegible] ing GOPAL DAS *v* ALAF KHAN

[I. L. R., 11 [illegible]

268. ——————— *Pauper* [illegible] *Judge applying to suit* [illegible] *applicable—Civil Procedure Code* [illegible]

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S. 622—*continued.*

622—Where the Judge in the Court below in making an enquiry under cl. (c) of s. 407 of the Civil Procedure Code found that the applicant was a pauper, but having addressed himself to the merits of the case, to the rights of parties, and to matters which were entirely foreign to the enquiry that he [illegible]

within the meaning of s. 407, Civil Procedure Code. *Mathuranath Sarkar v. Umes Chandra Sarkar, 1 C. W. N., 626, Amir Hassan Khan v. Sheo Baksh Singh, I. L. R., 11 Calc., 6, Sew Bux Bogla v. Shib Chunder Sen, I. L. R., 13 Calc., 225; Rahim Bux v. Nundo Lal Gossami, I. L. R., 14 Calc., 321; Jagbandhu Pattuck v. Jadhu Ghose, I. L. R., 15 Calc., 47,* and *Birj Mohun Thakur v. Rai Umanath Chowdhury, I. L. R., 20 Calc., 8,* referred to and explained. DEBO DAS v. RAM CHARAN DAS CHELLA 2 C. W. N., 474

269. ——— *Landlord and tenant—Suit for rent.*—In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under the Civil Procedure Code, s. 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a former decree between the parties in respect of one piece of land, and made an order reversing [illegible] port of [illegible] e plain- [illegible] Patent, [illegible] Judge had failed to give effect to the previous decree, the error was not such as to give the Court jurisdiction to revise his proceedings under the Civil Procedure Code, s. 622. VANANGAMUDI v. RAMASAMI

[I. L. R., 14 Mad., 406

270. ——— *Revision, Powers* [illegible]

[illegible]

271. ——— *Transfer of Property Act (IV of 1882), s 87, Order under—Right of appeal.*—An order under s. 87 of Act IV of 1882 extending the time for payment of the mortgage-money by a mortgagor is a "decree" within the meaning of ss. 2 and 244 of the Code of Civil Procedure, 1882, and since an appeal lies from it, no application will lie under s. 622 of the Code for revision of such order. RAHIMA v. NEPAL RAI

[I. L. R., 14 All., 520

See KEDARNATH v. LALJI SAHAI

[I. L. R., 12 All., 61

272. ——— *Order made without jurisdiction—Order cancelling sale in execution of decree under s. 309, Code of Civil Procedure—Appeal.*—A person who had attached a decree and obtained leave to bid at the sale of land ordered to be sold in execution, and to have the purchase-money and the amount due under the decree set off against each other, became the purchaser for a sum less than the amount due under the decree. The [illegible]

s. 244, and might have preferred an appeal against the order sought to be revised; and that therefore the [illegible]

273. ——— *Erroneous decision with jurisdiction—Succession Certificate Act (VII of 1889), s. 4.*—A person applied for leave to sue *in formâ pauperis* to recover assets forming part of the estate of a deceased person. His application was dismissed on the ground that he produced no certificate under Act VII of 1889. *Held* that [illegible] and that the [illegible] vision [illegible] [illegible] .454

274 ——— *Order allowing* [illegible]

matter, made an order as to costs in favour of the defendants in the following terms: "As the case has [illegible] half the pleader's [illegible]

Code of Civil Procedure is granted [illegible] to the plaintiff to bring a fresh suit for the same matter. Cost allowed to defendants as above."

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

Held that the order under s 373 of the Code of Civil Procedure was an order liable to revision, as it was not open to appeal *Kalian Singh* v. *Lekhraj Singh, I. L. R., 6 All., 211,* referred to. DICK v. DICK . . . . I. L. R., 15 All., 169

275. ——— *Order refusing to discharge surety for insolvent judgment-debtor—Civil Procedure Code, ss 336, 344—Appeal.*—One *B M* became surety under s 336 of the Code

liability was discharged by the judgment-debtor applying to be made an insolvent and that the order refusing to discharge him was not appealable, and was therefore open to revision under s. 622 of the Code. BANNA MAL v. JAMNA DAS

[I. L. R., 15 All., 183

276. ——— *Transfer of execution-proceedings from one subordinate Court to another Discretion of Court.*—The High Court will not in its extraordinary jurisdiction interfere,

277. ——— *Judge of Small*

Code. JAGANNATH BRAKHBHAU v. SASSOON

[I. L. R., 18 Bom., 606

278. ——— *Decision on un-*

LAKSHMAN RAMCHANDRA I. L. R., 18 Bom., 369

279. ——— *Decision on inadmissible evidence*—A decision taking into consideration as evidence an unregistered lease was set aside under s 622. GURUNATH SHRINIVAS DESAI v. CHENBASAPPA . . I. L. R., 18 Bom., 745

280 ——— *Construction of document.*—The fact that a Court has misunderstood the effect of a document in evidence does not constitute a ground upon which the High Court can interfere in revision under s 622 of the Code of Civil Procedure. DASRATH RAI v. SHEODIN RAI

[I. L. R., 16 All., 39

281. ——— *Allowing objec-*

order for the execution of decree on the judgment-creditor's application,—*Held* that in omitting to make such an order the Judge failed to exercise a jurisdiction vested in him by law, and that s. 622 of the Civil Procedure Code (Act XIV of 1882) was therefore applicable. NATHUBHAI MULCHAND v. NANA BABU . . . I. L. R., 19 Bom., 544

282. ——— *Dismissal of*

absent, and, as neither the other pleader nor the appellant was in a position to continue the argument, the Subordinate Judge passed an order, purporting to be under s 556 of the Code of Civil Procedure, dis-

283. ——— *Discretion of Court in exercising revisional powers—Civil Procedure Code, ss. 623 et seqq—Review of judgment granted on ground not allowed by s. 629*—A

ABDUL ALI .

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

284. ——— *Land Acquisition Act (X of 1870), ss 3, 21, and 25 Exercise of jurisdiction by Judge under the Act—"Material irregularity"—Mistake in regard to the principle of calculation of the value of the land acquired*—If a Judge and assessors, sitting to [illegible]

[illegible] matters prohibited by s 25 thereof, such procedure would amount to material irregularity in the exercise of their jurisdiction, and would justify the intervention of the High Court under s. 622 of the Code of Civil Procedure Having regard to the definition of "land" contained in s 3 of Act X of 1870, there is nothing illegal in a Judge taking into account the value of [illegible] a salt fact [illegible] of the ma[illegible] sideration [illegible] was in erro[illegible] one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction JOSEPH v. SALT CO [illegible] I. L. R., 17 Mad., 371

285. ——— *Power to call* [illegible]

[illegible] proving what was necessary to meet the point, and admitted other appeals after they had become time-barred *Held* by the majority of the Full Bench [illegible]

[illegible] of the powers given by s 622 of the Code of Civil Procedure *Amir Hassan Khan v. Sheo Baksh Singh, I L. R, 11 Calc., 6,* followed *Held* further (BEST and DAVIES, JJ., dissenting) that the case contemplated by the words "act[illegible]

[illegible] only to errors of procedure, and it is not in every case that the High Court would, in the exercise of the discretionary power granted it by the section, interfere in revision. The interference would be confined to cases where the illegality or irregularity was such as had occasioned or might occasion a substantial failure of justice, as in the present case KRISTAMMA NAIDU v. CHAPA NAIDU

[I. L. R., 17 Mad., 410

286. ——— *Error of procedure—Mode of applying powers of superintendence of Court under s 622*—The words "acting with material irregularity" in the third clause of s 622, Civil Procedure Code, imply only the committing of an error of procedure, but "acting illegally" does not mean the same thing. The third clause of s 622, Civil Procedure Code, is intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases, and the question whether any case comes under the clause has to be determined with reference to the grossness and palpableness of the error complained of, and to the [illegible] *Kristamma* [illegible] *d., 410,* [illegible] *Baksh Singh, I. L. R., 11 Calc., 6,* explained. BHAGWAN RAMANUJ DAS v. KHETTER MONI DASSI

[1 C. W. N., 617

287. ——— *Certificate Act* [illegible] *certificate* [illegible] *Discretion* [illegible] person hav[illegible] Succession [illegible] ordered the [illegible] furnishing security under s. 9 of the Act. *Held* that such an order was within the discretion of the Judge, and there being shown to be nothing improper in the exercise by the Judge of his jurisdiction, the Court refused to interfere to set the order for security aside. *Mhalsabai v. Vithoba Khandappa Gulbe, 7 Bom, Ap, 26* referred to BAI DEVKORE v LALCHAND JIVANDAS

[I. L. R., 19 Bom., 790

288. ——— *Decision of Appellate Court* [illegible]

[illegible] Civil Procedure Code, the Court of Appeal [illegible]

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued*

[illegible]

1 C. W. N., 617, referred to. *Amir Hassan Khan* v. *Sheo Baksh, I L R., 11 Calc, 6,* explained. *Kristamma Naidu* v. *Chapa Naidu, I L R., 17 Mad, 410* disapproved. MATHURA NATH SARKAR v UMESH CHANDRA SARKAR [1 C. W. N., 626

289. ——— *Error in dis-*

[illegible]

Procedure Code, to divide the assets, and if, with a view to the division of assets, he had made a mistake in the principle upon which they ought to have been divided, such an error was one of law merely, and not subject to review under s. 622, Civil Procedure Code *Held* further that a mere mistake in law by a lower Court does not bring a case under s 622, Civil Procedure Code *Amir Hassan Khan* v. *Sheo Baksh Singh, I L R 11 Calc, 6,* followed *Brij Mohun Thakur* v. *Rai Uma Nath Choudhry, I. L R, 20 Calc, 8,* referred to *Held* (by BANERJEE, J) that the third clause of s 622, *viz.*, "acted illegally or with material irregularity," is not limited to cases of procedure only This clause is

[illegible]

has led to injustice so grave and manifest that it is desirable that the High Court should interfere with them. *Held* that, assuming that the lower Court had no jurisdiction to enter into the question of the *bona fides* of the decree, the order of the lower Court might stand upon the other two grounds, for the error, if any, does not come within the scope of this clause, and having regard to the fact that s 295, Civil Procedure Code, provides a remedy by a regular suit, the case is not one which, so far as the decision rests upon the second and third reasons, can be said to come within the scope of the third clause of s. 622, Civil Procedure Code. *Amir Hassan Khan* v. *Sheo Baksh Sing, I. L. R., 11 Calc., 6,* explained. *Balaini Koer* v. *Dinu Rai, I. L. R, 8 All, 111,* dissented from *Kristamma Naidu* v. *Chapa Naidu, I L. R., 17 Mad., 410,* disapproved. RAGHU NATH GUJRATI v RAI CHATRAPUT SINGH 1 C W N., 633

290 ——— *Civil Procedure Code, s 283—High Court's powers of revision—*

[illegible]

judgment. *Held* that, there being a remedy by suit under s. 283 of the Code of Civil Procedure, the High Court should not interfere with such order in revision. *Ittiachan* v *Velappan, I. L R, 8 Mad, 484; Sheo Prasad Singh* v. *Kastura Kuar, I L. R, 10 All., 119,* and *Gopal Das* v *Alaf Khan, I. L. R., 11 All., 383,* referred to GUISE v. JAISRAJ [I. L. R, 15 All., 405

291 ——— *Exercise of power of High Court under s 622 of the Civil Procedure Code, 1882, where there is no appeal—Order*

[illegible]

manded the case for trial as a contested application KHETTRAMONI DASI v SHYAMA CHURN KUNDU [I L R., 21 Calc, 539

292 ——— *Order refusing to amend a clerical error in the form of probate—Probate and Administration Act (V of 1881), s 86—Succession Act (X of 1865), s 263* Where there was a clerical error in the form of probate granted, and the Judicial Commissioner refused to amend it on the ground that the probate was granted by his predecessor, it was held that, though there was no appeal from such an order either under s. 86 of the Probate and Administration Act (V of 1881 or s 263 of the Succession Act (X of 1865), yet the High Court might deal with the case under s 622 of

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

the Civil Procedure Code, and set aside the order. *Khettramoni Dasi* v. *Shyama Churn Kundu, I. L. R., 21 Calc., 539,* followed GERINDRA KUMAR DAS GUPTA v. RAJESWARI ROY . I. L. R., 27 Calc., 5

293 ———————— *Exercise of revisional powers when there was remedy by separate suit —Right of suit—Executing Court delivering possession of property not specified in sale-certificate —*

villages amounting to a certain area. The judgment-debtors possessed property in those villages over and above that sought to be sold The property as above described was sold, and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holder purchased the property so sold and applied for possession thereof, but in their application they inserted a detail of the specific shares of property held by the several judgment-debtors over which they prayed for possession. The Court executing the decree went into the question of the specification of shares and ordered possession to be delivered over certain specific shares of the several judgment-

Sanyal v. *Kali Das Sanyal, I. L. R., 19 Calc., 663,* referred to. GHULAM SHABBIR v. DWARKA PRASAD [I. L. R., 18 All., 163

294. ———————— *Decision as to admissibility of document—Error in law —Per*

295. ———————— *Revision, Powers of—Stamp Act (I of 1879), s. 34, sub-s. (3).* —A certain document, although unstamped, was

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

and dismissed the suit. The plaintiff moved the High Court under s. 622, Civil Procedure Code, on the

1 C. W. N. 626; and *Raghu Nath Gujrati* v. *Rai Chatraput Singh, 1 C. W. N., 633,* referred to. ENAT MONDUL v. BALORAM DEY . 3 C. W. N., 581

296. ———————— *Civil Procedure*

a suit against defendants 1 and 2 for declaration of title to, and for khas possession of, certain land against the other defendants The suit was contested by defendants 1 and 2 only, and plaintiff obtained a decree.

SUPERINTENDENCE OF HIGH COURT—*concluded.*

4. CIVIL PROCEDURE CODE, S. 622 —*concluded.*

High Court had jurisdiction, under s. 622, Civil Procedure Code, to set aside the order of the Munsif. That

SUPERSTITIOUS USES

——— Request for—

See WILL—CONSTRUCTION 2 Hyde, 65
[5 B. L. R., 433
2 B. L. R., O. C., 148
I. L. R., 15 Mad., 424

——— Statute of—

See ENGLISH LAW—SUPERSTITIOUS USES, STATUTE OF . 1 Bom., Ap., 4
[12 Bom., 214

SUPPLEMENTAL SUIT.

See COSTS—SPECIAL CASES—PARTITION.
[I. L. R., 21 Calc., 904

——— Suit in Zillah Court simultaneous with suit in Supreme Court—The mere pendency of a suit in the Supreme Court does not operate as a bar to the prosecution of a suit in a Zillah Court intended to be simply in furtherance of, and supplemental to the suit in the Supreme Court. NAZIR ALI KHAN *v.* OJOODHYARAM KHAN
[5 W. R., P. C., 83: 10 Moore's I. A., 540

SUPREME COURT, BOMBAY.

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION.
[5 Moore's I. A., 137

See JURISDICTION—MATRIMONIAL JURISDICTION . . 4 W. R., P. C., 91
[6 Moore's I. A., 348

1. ——— Charter of Supreme Court—*Construction of statute—Statute limiting preroga-*

PHENSON . . . 3 Moore's I. A., 488

QUEEN *v.* EDULJEE BYRAMJEE
[3 Moore's I. A., 468

The Charter, having been granted by the Crown by force of an Act of Parliament, must be construed with reference to the powers conferred by the Act, even though the prerogative of the Crown were limited by such construction. QUEEN *v.* EDULJEE BYRAMJEE
[3 Moore's I. A., 468

2. ——— *Construction of Charter—Law of limitation—English law.*—The Charter of 8th December 1823, which created the Supreme Court at Bombay, provided by s. 29 that "in cases of Mahomedans or Gentoos their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, should be determined, in cases of Mahomedans, by the laws and usages of the Mahomedans, and where the parties are Gentoos, by the laws and usages of the Gentoos, or by such laws and usages as the same would have been determined by if the suit had been brought in a native Court," and the 37th section directs that "the Court shall frame such process, and make such rules and orders for the execution of the same, in all suits, civil and criminal, to be commenced, sued, or prosecuted, within their jurisdiction, as shall be necessary for the due execution of all or any of the persons thereby committed thereto, with an especial

so far as the same can consist with the due execution of law and the attainment of substantial justice." *Held*, upon a construction of these sections, that as the law of limitation is a matter of procedure, and the Supreme Court at Bombay had power to frame its procedure different from the native Courts, the Court was right in allowing the plea of the English statute of limitations in an action between Hindus upon a

the fact to raise an objection to the cause being decided by the English law of limitations. RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND
[5 Moore's I. A., 234

3. ——— Jurisdiction—*Admission of attorneys.*—The Supreme Court, Bombay, had no jurisdiction to admit persons as attorneys and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out in the Bombay Charter and Letters Patent of 1823 estab-

[2 Moore's I. A., 423

4. ——— *Suit for partition of property out of jurisdiction.*—The late Supreme Court (Bombay) had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction. RAMCHANDRA DADA NAIK *v.* DADA MAHADEV NAIK . . 1 Bom., Ap., 76

5. ——— *Suit concerning revenue — Government quit rent — Suit against Collector of Revenue for distraint.*—By the Charter

SUPREME COURT, BOMBAY—*concluded.*

SUPREME COURT, CALCUTTA.

1. ———————— *Carrying on business.*—An inhabitant of Benares, trading at Calcutta and having a house of business there, held to be subject to the jurisdiction of the Supreme Court. JANOKEY DOSS *v.* BINDABUN DOSS

[3 *Moore's I. A.*, 175

2. — Jurisdiction of Criminal Court—*Party privy to misdemeanour committed within jurisdiction.*—Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee that the offence having been completed within the

v. KING . . . 1 Moore's I. A., 67

SUPREME COURT, MADRAS.

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL I. L. R., 8 Mad., 24

1. ———— Jurisdiction—*Order allowing Registrar to institute suit on behalf of infants—Officer of Court entitled to commission—Personal interest in conduct of suit—Stat. 2 & 3 Will. IV,*

infants where it appeared their property was unprotected. *Held,* in a case in which he was allowed to file

SUPREME COURT, MADRAS—*concluded.*

2.———————— *Equitable jurisdiction in suits relating to charitable funds.*—The Supreme Court, Madras (established by the Madras Charter, 1800), had an equitable jurisdiction similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. ATTORNEY GENERAL *v.* BRODIE

[4 Moore's I. A., 190

SURBORAKARI TENURE.

See LAND TENURE IN ORISSA

[I. L. R., 11 Calc., 699

SURETY.

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY.

[I. L. R., 4 Calc., 331
I. L. R., 19 Bom., 578

See GUARANTEE . I. L. R., 6 Mad., 406
[I. L. R., 10 All., 531
22 W. R., 209

See HINDU LAW—DEBTS

[I. L. R., 11 Mad., 373
I. L. R., 23 Bom., 454

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . 1 Bom., 135

See CASES UNDER PRINCIPAL AND SURETY.

See CASES UNDER RECOGNIZANCE TO APPEAR.

See CASES UNDER SECURITY FOR GOOD BEHAVIOUR.

——— Agreement to become, on deposit of security.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 1 All., 751

——— Discharge of—

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174

See MINOR—BOMBAY MINORS ACT (XX OF 1864) . I. L. R., 19 Bom., 245

See CASES UNDER PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

——— Liability of—

See BOND . . 9 B. L. R., 364
[14 Moore's I. A., 86

——— of defaulting tenant, Suit against—

See RES JUDICATA—PARTIES—PRO FORMA DEFENDANTS . 3 B. L. R., Ap., 37

SURETY—*continued*

——— Suit by, against principal for money paid on his account

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION.

[B. L. R., Sup. Vol., 691

1. LIABILITY OF SURETY.

1. ——— Duration and extent of liability.—A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship exists, and with reference only to the person to whom he made himself responsible. MOHIP NARAIN *v.* SHAW . . . . . 25 W. R., 250

2. ——— *Security bond for restitution of property taken under decree—Liabi-*

liable for the fulfilment of the decree, not only of the Court of Regular, but also of that of the Court of Special Appeal. NARAYAN DEV *v.* GAJANAN DIKSHIT . . . 10 Bom., 1

3. ——— *Liability of guarantor for gomashta—Death of surety.*—Where a party engaged to be surety for a gomashta and to make good all defalcations proved to have been made

4. ——— *Civil Procedure*

Held (PINHEY, J., *dissentiente*) that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that

SURETY—*continued.*

1. LIABILITY OF SURETY—*continued.*

5. ——— **Extent of liability**—*Security*

Akbur Ali, mohurrir in the Octroi Department, for

sums shown to have been misappropriated, and that he could not be held liable for losses which accrued to the Municipality from misconduct on the part of the mohurrir other than misappropriation, and that in any case he could only be liable for the actual damage sustained by the Municipality. TORAB ALI *v.* PRESIDENT OF THE MUNICIPAL COMMITTEE OF ALLAHABAD . . 6 N. W., 170

6. ——— *Withdrawal of security placed with sureties to indemnify co-sureties.*—Where a surety, without taking precautions to see to its proper application, permits the party for

secure which they become sureties, it is the duty of each as between himself and co-sureties to see that the money is not misapplied. WOON CHIT POE *v.* WEE CHANG 15 W. R., 185

7. ——— *Suit against surety of Nazir by party whose property has been misappropriated by Nazir.*—The surety of a Nazir who had entered into the usual bond of indemnity with the Collector of the district against all losses caused by the Nazir during the tenure of his office was held not liable, at the suit of a person whose property had been misappropriated by the Nazir, to make good any loss sustained by such person. BOCHA GOPE CHOWDHRY *v.* BRAJAGABIND DAS

[9 B. L. R., Ap., 26: 18 W. R., 259

8. ——— *Civil Procedure Code, 1882, s. 336—Execution-proceedings.*—The liability of a surety under s. 336 of the Civil

SURETY—*continued.*

1. LIABILITY OF SURETY—*continued.*

Procedure Code ceases when the proceeding taken in execution of a decree wherein the security was furnished comes to an end. LALIT SAHOY v. ONOTA SUNDERI MITRA . . I. L. R., 14 Calc., 757

9. ———————— *Judgment-debtor applying to be declared an insolvent—Civil Procedure Code, ss. 336, 344*—S on the 16th January 1856 obtained a decree for a certain sum of money against C. In execution of that decree C was arrested on the 28th January, and upon his being brought before the Court he expressed his intention of apply-

became surety

to produce C

direct him so

him to pay the amount of the decree, and standing security for C's applying to be declared insolvent On the 19th February C filed his petition to be declared an insolvent before the District Judge under s 344 of the Code, and on the 11th May 1886 his petition was dismissed owing to his non-appearance. S thereupon applied for execution of the decree against K. *Held* that K was released from his obligation under the bond executed. KOILASH CHANDRA SHAHA v. CHRISTOPHORIDI

[I. L. R., 15 Calc., 171

10. ———————— *Civil Procedure Code, ss. 336, 344—Judgment-debtor applying to be declared an insolvent*—A person who executes a bond undertaking to produce a judgment-debtor at any time when the Court should direct him to do so, and standing security under s 336 of the Civil Procedure Code for the judgment-debtor's applying to be declared insolvent, is released from his obligation under the bond when the judgment-debtor files his

11. ———————— *Civil Procedure Code (1882), s 336—Bond for production of insolvent judgment-debtor—Conditions in bond unprovided for by s 336.*—Where in a bond under s 336 of the Code of Civil Procedure, besides the usual covenants to produce the judgment debtor before the Court, and that the judgment-debtor would apply to be declared an insolvent further stipulations were contained as to what should happen if the judgment-debtor's application to be declared insolvent were refused, it was *held* that the latter stipulations were not such as were contemplated by s 336, and could not be enforced under that section. JANKI DAS v. RAM PARTAB . I. L. R., 16 All., 37

12. ———————— *Civil Procedure Code (1882), s 336—Judgment debtor's application to be declared an insolvent—Release of the surety.*—A person standing surety for a judgment-debtor under s 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation

SURETY—*continued.*

1. LIABILITY OF SURETY—*concluded.*

13 ———————— *Surety for minor—Contract Act (IX of 1872), s. 128.*—A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable KASHIBA v. SHRIPAT NARSHIV . I. L. R., 19 Bom., 697

2. ENFORCEMENT OF SECURITY.

14. ———— Mode of enforcement—*Act XXIII of 1861, s. 8—Surety-bond—Execution.*—A surety bond taken by the Court under s 8 of Act XXIII of 1861, after judgment had been pronounced, could be enforced under s 204 of Act VIII of 1859. ABDUL KARIM v. ABDUL HUQ KAZEE

[8 B. L. R., 295; 15 W. R., 21

15. ———————— *Execution of decree against surety—Surety-bond for payment of costs under s. 312*—A bond given as security for costs under s. 312 of Act VIII of 1859 could be enforced in a summary way by proceedings in execution. CHUTTERDHAREE LALL v. RAMTELAHEE KOER

[I. L. R., 3 Calc., 318: 1 C. L. R., 347

16. ———————— *Civil Procedure Code, 1859, s. 204—Execution of decree against surety—Stay of execution on security being given.*—Where a sale in execution of a decree was stayed

HEMANGINI DASI

[4 B. L. R., Ap., 27: 13 W. R., 35

17. ———————— *Civil Procedure Code, 1859, s. 204—Sureties under Civil Procedure Code, 1859, ss. 76, 83—Sureties, after decree.*—S 204, Act VIII of 1859, applied to cases such as that of parties who became sureties under s 76 or s. 83, but not to parties who became securities after a decree was passed RAM KISSEN DOSS v. HURKHOO SINGH . . . 7 W. R., 329

Rejecting a review in HURKHOO SINGH v. RAM KISHEN . . . . 6 W. R., Mis., 44

18. ———————— *Civil Procedure Code, 1859, s. 204—Compromise embodied in decree—Execution against surety.*—A compromise embodied in a decree was to the effect that defendant

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

principal, but was afterwards arrested, and *M H* became surety for his production and for the payment of the interest, if the order of the Munsif releasing the judgment-debtor were set aside on appeal. *Held* (by MARKBY, J.) that the decree on the compromise was not one upon which execution could be carried out, at any rate for the sum which was only conditionally due, as the inquiry relative to the fulfilment of the condition could only be made in a regular suit, and that execution could not be [illegible]

of a decree or any part thereof. BOLAKEY LALL *v.* MAHOMED HOSSEIN KHAN . . 14 W. R., 63

19. ———— Civil Procedure Code, 1859, s. 204—*Surety for performance of decree—Suit on surety-bond*.—When a person has become liable as security for the performance of a decree, s. 204 of Act VIII of 1859 gives a remedy to the decree-holder against the surety in addition to any remedy which he may have on the surety-bond. It does not prevent the decree-holder from bringing [illegible]

20. ———— Civil Procedure Code, 1859, s. 204—*Surety executing bond for payment of decree by instalments—Alteration of terms of decree*.—Where, by an arrangement sanctioned by the proper Court, the terms of a decree were varied, and provision was made for its payment by instalments, for the payment of a portion of which instalments a surety executed a bond hypothecating his property,—*Held* that the terms of s. 204 of the Civil Procedure Code were not applicable to such an arrangement. CHUNDEE DEEN *v.* HUSSUN ALI

[3 N. W., 88

21. ———— Civil Procedure Code, 1877, ss. 210, 253—*Execution of decree against surety—Payment of decree by instalments*—A judgment-debtor whose property was about to be sold appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the d[illegible]

therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif, that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X of 1877. CHANDAN KUAR *v.* TIRKHA RAM . I. L. R., 3 All., 809

22. ———— Civil Procedure Code, 1882, s. 253—*Surety for execution of appel-* [illegible]

BALAJI *v.* RAMASAMI . I. L. R., 7 Mad., 204

23. ———— Civil Procedure Code, 1882, s. 253—*Execution of decree against surety*.—A surety entered into a bond undertaking to produce certain debt bonds in case the defendant in a suit should fail to produce them, or to pay the amount mentioned therein. Upon an application being made that execution should issue against the surety,—*Held* that a bond so worded did not make the surety liable for the performance of the decree so as to bring the case within s. 253 of the Code of Civil Procedure, and that the liability of the surety could not be enforced in execution. NARAYANAMMA *v.* RAMAYYA CHETTI

[I. L. R., 22 Mad., 268

24. ———— Right to enforce security— [illegible]

Recorder made an order cancelling the bond, and [illegible]

AHMED YOUSAFFJI

[7 B. L. R., 81: 15 W. R., 538

ETY—*continued.*

DISCHARGE OF SURETY—*continued.*

y under Act XXIII of 1861, s 8, allowed the dant to be at large upon security for his rance when called upon, and when the Court

4. ——— Change in circumstances er which security was given—*Guarantee good conduct of gomashta—Transfer of pro- guaranteed.*—Where two parties executed rety bond addressed to *J*, *R*, and *M*, rs of certain property, binding themselves to be rable for the good conduct and proper discharge

r bond. RAJ KRISTO MOOKERJEE v. ISSUR UNDER MOOKERJEE . . 23 W. R., 90

45. ——— Alteration of ition and risk of salt darogah—Liability of ety for performance of duties.—When a salt

46. ——— *Civil Procedure Code, ss 336, 341—Insolvency—Surety for insolvent judgment debtor filing petition.*—One *B M* became

judgment-debtor applying to be made an insolvent *Koylash Chandra Shaha* v. *Christophoridi*, *I L R*, *15 Calc*, *171*, referred to BANNA MAL v. JAMNA DAS . . I. L. R., 15 All., 183

47. —— Acceptance of further security—*Security signed by surety—Security-bond.*—A security, voluntarily signed, existing upon the record, and even taken off the file, is a valid and subsisting security. The intentions and motives of the obligor in giving the security must be judged by what is mentioned in the instrument. The accept-

W. R., P. C., 129 : 2 Moore's I. A., 511

48 ——— Notice of intention to cease to be surety—*Security for payment of rent.*—A

SURETY—*concluded.*

3. DISCHARGE OF SURETY—*concluded.*

surety for the due payment of rent by a third person

4 MISCELLANEOUS CASES.

49 ——— Surety of lessee afterwards

by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor BURRODAKANT ROY v. RAM TUNNOO BOSE . 7 W. R., P. C., 15

S. C. BURDAKANTH ROY v. ALUK MUNJOOREE DASIAH . . . . 4 Moore's I. A., 321

50 ——— Suit by surety after satisfaction of bond—*Cause of action—Limitation* —The plaintiff executed a bond jointly with a servant of the defendants on 10th July 1861. The proceeds were expended for the defendant on the 30th August 1861. The creditor obtained a decree upon the bond for principal and interest, which the plaintiff satisfied by two payments made on 4th July 1866 and 30th June 1868, respectively. He brought a suit against the defendant for the amount on 22nd June 1869. *Held* that the plaintiff could maintain his suit against the defendant for the

B. L. R., 591 : 15 W. R., 415

Reversing on appeal S. C. BHOGEERUTH ADHIKAREE v. TARINEE CHUNDER PAKRASSEE [14 W. R., 174

SURRENDER OF TENURE.

See CASES UNDER LANDLORD AND TENANT — ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 19 Calc., 790

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT [I. L. R., 18 Bom., 250

SURVEY.

1. ——— Survey proceedings, Power of Collector to re-open —Where a survey is once concluded, the map completed, and the thakbust

SURVEY—*concluded.*

to appear. KALEE NARAIN BOSE *v.* ANUND MOYEE GOOPTA . . . . 21 W. R., 79

2. Excess lands found after survey — *Presumption.* — Where the admitted mileek lands of a raiyat were found by survey to be somewhat in excess of the land released to him by resumption proceedings based on a former survey, it was held that the excess could not be assumed as a matter of course to be mâl lands. DINOBUNDHOO SUHAYE *v.* COURT OF WARDS . 11 W. R., 347

SURVEY ACT (BOMBAY)

See BOMBAY SURVEY AND SETTLEMENT ACT I OF 1865.

SURVEY AWARD.

See CASES UNDER ACT XIII OF 1848

See CASES UNDER LIMITATION ACT, 1877, ARTS. 45, 46 (1859, s 1, cl. 6)

1. —— Requisites for survey award —*Decision on bonâ fide contention* —To constitute a survey award, there must be a decision on a *bonâ fide* contention between the parties after a proper investigation into the points of issue between them. NUBO KISHEN ROY *v.* GOBIND CHUNDER SEIN [6 W. R., 317

2. —— Decision on fact not disputed —*Beng. Reg VII of 1822—Summary award.* —The finding of a Survey Deputy Collector that a party has been in possession of certain land for more than a year, where the fact is not disputed, is not a "summary award" under Regulation VII of 1822 RADHAPERSHAD SINGH *v.* RAMJEEWUN SINGH [11 W. R., 380

3. —— Striking off complaint in Survey Department. — On a complaint being made in the Survey Department as to a demarcation of land, the Deputy Collector instead of investigating the circumstances, ordered a local inquiry by an Ameen, and on the plaintiff omitting to deposit the Ameen's fees, struck the case off his file *Held* that the decision was not an award on which a cause of action could be based. KRISTO CHUNDER DOSS *v.* SOUDAMONEE DOSSEE . . 12 W. R., 174

4 —— Order of settlement officer without inquiry. An entry made in the settlement papers was objected to on the merits. The objection was disallowed summarily without inquiry, on the ground that the papers had been drawn out more than a year before the objection was taken. *Held* that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the [illegible]

5. —— Act XIII of 1848, Operation of—*Effect of award.*—Act XIII of 1848 operates in certain cases to give to a survey award the full effect of a decree of a Civil Court, by taking away from the Courts the power of entertaining any suit for contesting the justice of such award after a limited time. MOKUND MOORAREE BISWAS *v.* WOOMA CHURN MOOKERJEE . 23 W. R., 173

6. —— Sanction by Collector —*Acceptance of proceedings as correct.*—To make a survey demarcation effective, it is not absolutely necessary that there should be any more special sanction by the Collector than a general acceptance of the survey proceedings as correct. HUNOOMAN CHOWBAY *v.* BINDHOO TORABA . . . 10 W. R., 336

7. —— Right to benefit under award [illegible]

ALI ASHRUF *v.* CHONGA GOBIND ROY [5 W. R., 220

8. —— Effect of award—*Act IV of 1840* [illegible]

9. —— *Effect of survey award on purchaser—Evidence of title.*—A purchaser is bound by a survey award passed against the persons from whom he derived his title. ALLYAT *v.* JUGGUT CHUNDER ROY . . 5 W. R., 242

10. *Act IV of 1840, Award under.—Semble*—Where a zamindar let his estate [illegible] the who[illegible] another [illegible] by an [illegible] which the former was a party. LEKHRAJ ROY *v.* COURT OF WARDS . . 14 W. R., 395

11. *Act IV of 1840, Award under, failure to set aside* —*Held* that the plaintiff, having failed to set aside an award made under Act IV of 1840 within the period of limitation, could not claim in opposition to the award. GOPAL NATH *v.* ABDOOL GHANEE . . 1 Agra, 120

[illegible] joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. HUR LAL ROY *v.* SOORUJ NARAIN ROY . . . 3 W. R., 7

13 —— *Proceedings under Act IV of 1840—Evidence of possession*— Proceedings under Act IV of 1840, to which both litigants have been parties, was held to be properly treated as evidence between them on the question of possession. RADHA CHURN DASS GOSSAMEE *v.* AKRANKHOOTEA . . 20 W. R., 420

KASHEE KISHORE ROY *v.* BAMA SOONDAREE DEBIA . . . . . 23 W. R., 27

SURVEY AWARD—*continued.*

14. ———— *Effect as against decree for possession* — A survey award cannot override the decree of a competent Court awarding possession HURO NATH ROY v. ANUND CHUNDER ROY
[1 W. R., 329

15. ———— *Evidence of possession—Evidence of title* —Survey proceedings are evidence of actual possession, and must be regarded as correct, so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title LEELANUND SINGH v. MOHENDRO NARAIN SING
[13 W. R., P. C., 7

16. ———— *Proof of possession—Suit to set aside survey award.*—In a case for setting aside a survey award which declared the plaintiff and the opposite party entitled to certain

for he must first have fixed what lands are to be appropriated by him, and what by the intervenor separately, for the loss suffered by each party by diluvion, and after that how much, and what, of the remainder is entitled to be held jointly. TARINEE KANT LAHOORY v. HANEE MUNDUL
[7 W. R., 203

17. ———— *Award by superintendent of survey—Evidence of title* —An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit KOYLASH CHUNDER GHOSE v. RAJ CHUNDER BANERJEE . 12 W. R., 180

18. ———— *Decision on Act VI of 1840—Evidence of title* —A decision in an Act IV of 1840 case was no evidence of title one way or the other GUDADHUR v. KOONDOO RAMKOOMAR BOSE 6 W. R., 155

19. ———— *Award under Act IV of 1840—Proof of title* —An award under Act IV of 1840 was not sufficient proof of title when the person in whose favour it was given did not

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20. ———— *Suit to set aside award under Act IV of 1840—Proof of title* —In a suit to set aside an award under Act IV of 1840.—*Held* that the plaintiff ought to furnish some decisive proof of his title, to justify the Court in disturbing the award of a competent authority, and that resumption proceedings instituted by Government, which declared only that the lands were unfit for resumption and therefore left them in the plaintiff's possession, were not such convincing proof of title. RAMASOONDUREE DABEA CHOWDHRANEE v. BHUGHUTTEE DABEA CHOWDHRANEE GREESH CHUNDER CHOWDHRY v. BHUGHUTTEE DABEA CHOWDHRANEE
[1 Hay, 405

SURVEY AWARD—*concluded.*

21. ———— *Award under Beng. Reg. VII of 1822, s 33—Power of Court to*

22. ———— *Award for more than amount of land claimed* —A survey award, if given for more than is claimed, is not binding as to the excess It is not conclusive as to title LULEET NARAIN SINGH v. NARAIN SINGH 1 W. R., 333

SURVEY OFFICER.

See CASES UNDER KHOTI SETTLEMENT ACT

See UNDER SETTLEMENT OFFICER.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 21 Calc., 935

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 21 Calc., 935

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See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT I. L. R., 17 Mad., 144

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 19 Bom., 338
I. L. R., 17 All., 578
I. L. R., 23 Calc., 912
I. L. R., 22 Mad., 380

See CONVERTS . I. L. R., 10 Mad., 69

See COURT FEES ACT, 1870, s. 19D.
[I. L. R., 23 Calc., 980

See GRANT—POWER OF ALIENATION BY GRANTEE . I. L. R., 11 Calc., 1

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY . 6 Mad., 93
[I. L. R., 4 Mad., 250
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See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—DAUGHTERS
[I. L. R., 6 Bom., 85
15 B. L. R., 10
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See HINDU LAW INHERITANCE—SPECIAL HEIRS—MALES—AFFILIATED SON.
[I. L. R., 17 Mad., 48

See HINDU LAW—INHERITANCE—SPECIAL LAWS—NIHANGS.
[I. L. R., 16 All., 191
L. R., 21 I. A., 17

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See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS — OTHER MEMBERS . 3 B. L. R., F. B., 31
[6 B. L. R., 565
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I. L. R., 18 Calc., 157
L. R., 17 I. A., 184
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See HINDU LAW — PARTITION — REQUISITES FOR PARTITION.
[I. L. R., 19 Mad., 345

See HINDU LAW—PARTITION—SHARES ON PARTITION—GENERAL MODE OF DIVISION . . I. L. R., 5 Calc., 142

See HINDU LAW — WILL—CONSTRUCTION —SURVIVORSHIP.
[I. L. R., 15 Bom., 443
I. L. R., 23 Calc., 563
L. R., 23 I. A., 18

See HUSBAND AND WIFE.
[I. L. R., 16 Bom., 630

See REPRESENTATIVE OF DECEASED PERSON.
[I. L. R., 19 Mad., 345

See WILL—CONSTRUCTION
[I. L. R., 5 Calc., 59

———— **Joint tenancy**—*Joint speculation on improving land—Real and personal property.* —A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise and *jus accrescendi* not allowed. The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate. WEBBE *v.* LESTER
[2 Bom., 55: 2nd Ed., 52

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———— **Meaning of**—

See GRANT—CONSTRUCTION OF GRANT.
[18 W. R., 469
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See LEASE—CONSTRUCTION
[8 W. R., 391
22 W. R., 326

———— **Succession to**—

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[I. L. R., 21 Calc., 997
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See BOMBAY ACT, VI OF 1862, s. 12.
[I. L. R., 11 Bom., 78, 551

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS. I. L. R., 11 Bom., 551
[L. R., 14 I. A., 89

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[I. L. R., 16 Bom., 408
I. L. R., 22 Bom., 834

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———— **Conduct of, as indicating his successor.**

See OUDH ESTATES ACT, 1869 s. 22.
[I. L. R., 3 Calc., 626
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———— **Registered interest of**—

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[I. L. R., 3 Calc., 522
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———— **Damage by overflow of**—

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[14 B. L. R., 209
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[1 B. L. R., S. N., 27
10 W. R., Cr., 51

———— **Repairs of**—

See CONTRACT ACT, s. 70.
[I. L. R., 18 Mad., 88

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[I. L. R., 12 Mad., 241
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[I. L. R., 17 All., 483

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See CANTONMENTS ACT (III OF 1880), s. 14.
[I. L. R., 15 Calc., 452

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See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 21 Bom., 628

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——— Drawback on—

See BOMBAY MUNICIPAL ACT, 1888, s. 158.
[I. L. R., 17 Bom., 394

——— Legality of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 21. I. L. R., 21 Bom., 630

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[I. L. R., 21 All., 348

——— Liability to—

See BENGAL MUNICIPAL ACT, 1884, ss. 113, 116 . . I. L. R., 21 Calc., 319

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, ss. 11 AND 84.
[I. L. R., 20 Bom., 732
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[9 Bom., 217

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[I. L. R., 16 Bom., 217

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[I. L. R., 23 Calc., 581
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[I. L. R., 18 Mad., 310
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[I. L. R., 8 Mad., 429

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[I. L. R., 14 Mad., 140
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See MADRAS MUNICIPAL ACT, 1884, SCH. A.
[I. L. R., 11 Mad., 238

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[I. L. R., 19 Mad., 83

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[7 Mad., 332
I. L. R., 3 Mad., 129
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[I. L. R., 13 Mad., 518
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[I. L. R., 6 Mad., 287
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[I. L. R., 9 Mad., 110
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[I. L. R., 22 Calc., 680

——— Suit to recover, illegally levied.

See BENGAL MUNICIPAL ACT, 1884, s. 85.
[2 C. W. N., 689

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[I. L. R., 17 Bom., 510

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[I. L. R., 15 Mad., 153

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[I. L. R., 21 Mad., 367

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[I. L. R., 23 Mad., 523

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[I. L. R., 19 Mad., 10

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[I. L. R., 1 Mad., 158

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[I. L. R., 14 Bom., 573

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[I. L. R., 13 Mad., 78

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[I. L. R., 1 Mad., 158
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1. ——— — Certificate tax—*Neglect to take out certificate—Fine.*—The fine imposed under s. 17, Act IX of 1868, for neglect to take out a certificate must not be less than twice the amount for which such certificate should be taken out. QUEEN v. RAM GOBIND CHUCKERBUTTY
[2 B. L. R., Ap., 40
11 W. R., Cr., 13

2. ——— Complaint for neglecting to take out certificate. ...

3. ——— Magistrate, Powers of.—A Magistrate was held to have acted rightly in dismissing complaint under s. 17 of Act IX of 1868, because ... cused ... In a ... pro- ... of the Code of Criminal Procedure, 1861, and must require proof of all the facts which go to constitute the offence. QUEEN v. KHETTRO MOHUN GHOSE
[11 W. R., Cr., 56

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[I. L. R., 16 Bom., 152
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[I. L. R., 24 Calc., 891

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[I. L. R., 15 All., 117

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[I. L. R., 15 Mad., 405

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[1 B. L. R., S N., 20 : 10 W. R., 260

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——— Acknowledgment of—

See Cases under Landlord and Tenant—Constitution of Relation—Acknowledgment of Tenancy by Receipt of Rent

——— Determination of incidents of—

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[I. L. R., 20 Calc., 249

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See Cases under Landlord and Tenant—Nature of Tenancy.

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[I. L. R., 3 Calc., 696
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4 C. W. N., 792

See Limitation Act, 1877, art. 139
[I. L. R., 8 Mad., 424
I. L. R., 22 Bom., 893
I. L. R., 24 Bom., 504

See Registration Act, 1877, s. 17
[I. L. R., 14 Bom., 319

TENANCY-IN-COMMON.

See Hindu Law—Will—Construction of Wills—Vested and Contingent Interests.
[I. L. R., 11 Bom., 69, 573

See Will—Construction.
[I. L. R., 15 Mad., 448
I. L. R., 23 Bom., 80

TENANT.

See Landlord and Tenant.

——— Suit against, for share of rent.

See Cases under Co-sharers—Suits by Co-sharers with respect to the Joint Property—Enhancement of Rent.

TENANT—*concluded.*

See Cases under Co-sharers—Suits by Co-sharers with respect to the Joint Property—Kabuliats

See Cases under Co-sharers—Suits by Co-sharers with respect to the Joint Property—Rent.

TENDER.

See Bengal Rent Act, 1869, s. 46.
[1 B. L. R., S. N., 7: 10 W. R., 101
16 W. R., 79
2 W. R., Act X, 88

See Small Cause Court, Presidency Towns—Jurisdiction—Immoveable Property . I. L. R., 17 Mad., 216

See Transfer of Property Act, s. 83.
[I. L. R., 17 Mad., 267

See Transfer of Property Act, s. 135
[I. L. R., 22 Calc., 792
2 C. W. N., 147

1. ——— Validity of tender—*Contract Act, s. 38—Tender of interest on mortgage-debt.*—Under a mortgage-deed taken to secure the repayment within three years of a sum of R16,000 advanced by the plaintiff, with interest at 15 per cent. from the 2nd July 1874, the date of the mortgage, it was stipulated that interest should be paid every six months, but that, if a year's interest should be unpaid, then the whole amount due for principal and interest should become payable at once; and also that the mortgagor might, after payment of interest, pay towards satisfaction of the principal any sum not less than R1,000. The first year's interest was allowed to get into arrear, but in September 1875 the defendant went to the plaintiff with R19,000, a [illegible]

[illegible]

2. ——— *Offer by letter to pay debt.*—A mere offer by a debtor by letter to pay an amount cannot be treated as a tender either in law or in equity. In order to stop interest, a strict tender should be proved. Kamaya Naik *v.* Devapa Rudra Naik . . I. L. R., 22 Bom., 440

3. ——— *Unconditional tender—Costs.*—In a suit to recover R1,323-15-6, the balance of the price of goods sold, on which an account had been come to between the parties, it appeared that the defendant had tendered before suit a sum of R1,043-5, stating in the letter of tender

TENDER—*concluded.*

that the sum so tendered was the only sum due. At the trial the plaintiff obtained a decree for the full amount claimed by him. *Held,* both in the Court below and on appeal, that the tender was bad, and therefore the plaintiffs were entitled to their costs. *Held per* KENNEDY, *J.*, that the tender was bad, being a tender of part of an entire debt. *Held per* GARTH, *C.J.* (MARKBY, *J.*, concurring), that the tender was also bad, as the plaintiffs could not have accepted the sum tendered without giving up the remainder of their claim. CHUNDER CAUNT MOOKERJEE *v.* JODOONATH KHAN

[I. L. R., 3 Calc., 468 : 1 C. L. R., 470

4. ——— *Tender of part of debt, Rule as to—Plea of tender—Payment into Court.*—The rule laid down in *Dixon* v. *Clark, 5 C. B., 365,* that the tender of only a part of a debt must be treated as if it had never been made, applies only where the party making the tender admits more to be due than is tendered A plea of tender before action must be accompanied by a payment into Court after action, otherwise the tender is ineffectual. ABDUL RAHMAN *v.* NOOR MAHOMED

[I. L. R., 16 Bom., 141

5. ——— *Agent—Cheque in payment of debt for rent—Suit for rent—Costs*—The landlord of a house through his agent sent in rent-bills to his lessee. The lessee gave the agent a cheque payable to her attorney for the amount demanded The attorney realized the amount of the cheque and gave the money to the agent, who tendered it to the landlord's attorney, who refused to accept, and the money was returned to the lessee's attorney *Held,* in a suit for the rent, that, under the circumstances, the tender amounted to payment *Held* further that although, as a general rule, the [illegible]

with costs BOLYE CHUND SING *v.* MOULARD

[I. L. R., 4 Calc., 572

TENURE.

——— Condition in lease for—

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

[B. L. R., Sup. Vol., 972
10 W. R., 156
11 W. R., 201
6 N. W., 326
I. L. R., 9 Calc., 88, 808
4 C. L. R., 469
12 B. L. R., 439

——— created under Court of Wards.

See COURT OF WARDS.

[15 B. L. R., 343

——— Forfeiture of—

See CASES UNDER LANDLORD AND TENANT —ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

TENURE—*continued.*

See CASES UNDER LANDLORD AND TENANT —FORFEITURE.

——— Relief against—

See CASES UNDER LANDLORD AND TENANT —FORFEITURE.

——— Transfer of—

See BENGAL REGULATION VIII OF 1819.

[3 B. L. R., P. C., 48
I. L. R., 17 Calc., 162

See BENGAL TENANCY ACT, s. 12.

[I. L. R., 16 Calc., 642
I. L. R., 19 Calc., 17, 774

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT.

[I. L. R., 14 Mad., 98

See LANDLORD AND TENANT—FORFEITURE —BREACH OF CONDITIONS.

[I. L. R., 17 Calc., 826

See LANDLORD AND TENANT—FORFEITURE —TRANSFER OF TENANCY.

[I. L. R., 20 Calc., 590

See CASES UNDER LANDLORD AND TENANT —TRANSFER BY LANDLORD.

See CASES UNDER LANDLORD AND TENANT —TRANSFER BY TENANT.

See LEASE—CONSTRUCTION.

[I. L. R., 17 Calc., 826

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R., 13 Mad., 60

See CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

See STAMP ACT, 1862, s 14

[3 B. L. R., Ap., 30

1. ——— Grant for purpose of living on the land.—*Per* PEACOCK, *C.J.*—If one man grants a tenure to another for the purpose of living [illegible]

Upholding, on appeal, KEMP, *J.*, in BANEE MADHUB BANERJEE *v.* JOY KISHEN MOOKERJEE

[11 W. R., 354

2. ——— *Homestead land—Transferability under the law before the Transfer of Property Act (IV of 1882)—Custom.*—Where a non-agricultural holding was transferred before the passing of the Transfer of Property Act,—*Held* that it could not be inferred that the holding was transferable from the mere fact that it was used for residential purposes, having regard to the law as it then stood. S. 108, cl. (*j*), of the Transfer of Property Act (IV of 1882) does not apply to transfers which took place before the Act. *Beni Madhub Banerjee v. Jai Krishna Mookerjee, 7 B. L. R., 152,* followed.

TENURE—*concluded.*

HARI NATH KARMAKAR *v.* RAJ CHANDRA KARMAKAR . . . . . 2 C. W. N., 122

NABU MONDUL *v.* CHOLIM MULLICK [I. L. R., 25 Calc., 896

3. ——— **Mokurari tenure**.—It is necessary that a tenure should be mokurari in order to be transferable. HUROMOHUN MOOKERJEE *v.* LALUNMONEE DASSEE . . . . 1 W. R., 5

4. ——— **Surburakari tenure in Cuttack**—*Consent of zamindar*.—The alienation of surburakari tenure in Cuttack is not practicable without the consent of the zamindar. DOORJODHUN DOSS *v.* CHOOYA DAYE . . 1 W. R., 322

5. ——— **Raiyatwari tenure**—*Consent of zamindar or talukhdar.*—*Quære*—Whether a transfer of a raiyatwari tenure can be effected without the consent of the zamindar or talukhdar, as the case might be, the immediate successor in estate. SHIBESSUREE DEBIA *v.* MOTHOORANATH ACHARJEE [13 W. R., P. C., 18: 13 Moore's I. A., 270

TERM OF YEARS.

See ENGLISH LAW—PERSONALTY, LAW RELATING TO . I. L. R., 24 Calc., 216

TERRITORIAL JURISDICTION.

——— **Effect of Cession on**—

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R., 1 Bom., 367 [L. R., 3 I. A., 102 10 Bom., 37

TERRITORIAL LAW OF BRITISH INDIA.

——— **Nature of territorial law**— [illegible] British India [illegible] SECRETARY OF [illegible] BENGAL [illegible] R., O. C., 87

TERRITORY, TRANSFER OF—

——— **District of Kanara**—*16 & 17 Vict., c. 95, 21 & 22 Vict., c. 106—Indian Councils Act, 24 & 25 Vict., c. 67.*—The power given by 16 & 17 Vict., c. 95, to alter the distribution of territories among the presidencies, was vested by 21 & 22 Vict., c. 106, in the Secretary of State for India, by whose order of 28th of February 1862 North Canara was annexed, the new arrangement of territory to take effect from such date as the Governor-General of India in Council [illegible]

TERRITORY, TRANSFER OF—*concluded.*

diction and authority of the Courts of Justice, the annexation of those purposes being made by the Secretary of State, and not being qualified or controlled by the proviso in s. 47 of 24 & 25 Vict., c. 67, which cannot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State. REG. *v.* VYANKATSVAMI . 2 Bom., 112: 2nd Ed., 106

TESTATOR.

See HINDU LAW—WILL.

See MAHOMEDAN LAW—WILL.

See CASES UNDER WILL.

——— **Acknowledgment of signature by**—

See WILL—ATTESTATION. [I. L. R., 1 Bom., 547

——— **Creditor of**—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT [I. L. R., 2 Calc., 208 I. L. R., 6 Calc., 429, 460 I. L. R., 10 Calc., 19, 413 L. R., 10 I. A., 80 I. L. R., 19 Calc., 48 I. L. R., 17 Mad., 373

——— **Debts of Hindu**—

See VENDOR AND PURCHASER—NOTICE. [I. L. R., 4 Calc., 897

——— **Power of**—

See CASES UNDER HINDU LAW—WILL—POWER OF DISPOSITION.

See MAHOMEDAN LAW—WILL.

——— **Signature of**—

See CASES UNDER WILL—EXECUTION.

THAKBUST AWARD.

See ACT XIII OF 1848 [2 B. L. R., P. C., 111: 12 W. R., P. C., 6

THEFT.

See CATTLE TRESPASS ACT, s. 22 [I. L. R., 22 Calc., 139

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE. [I. L. R., 17 Bom., 369 I. L. R., 27 Calc., 660, 930

See PARTNERSHIP PROPERTY. [13 B. L. R., 307, 303 note, 310 note

See POST OFFICE ACT, s. 48. [I. L. R., 14 Mad., 229

See CASES UNDER STOLEN PROPERTY.

THEFT—*continued.*

——— committed outside jurisdiction.

See ASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

——— Damages for—

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC
[I. L. R., 24 Calc., 672

——— Suspicion of—

See FOREST ACT, ss 52, 73
[I. L. R , 15 Bom., 229

1. ——— Penal Code, s. 378—*Definition of theft.*—As to what constitutes theft as defined in the Penal Code. QUEEN v. MADAREE
[3 W R., Cr., 2

3. ——— *Removal of pro-*

RAM SANTRAM I L. R., 9 Bom., 135

4. ——— *Giving up right of possession in property by owner.*—A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft ANONYMOUS
[4 Mad., Ap., 30

5 ——— *Making away with property lawfully possessed.*—The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust QUEEN v. BHARUT CHUNDER . . . 1 W. R , Cr., 2

6. ——— *Unexplained possession of rice—Meaning of corpus delicti.*—Where a prisoner was found in possession of rice not thrashed in the usual way, and having no paddy land of his own he failed to account satisfactorily for his possession of the rice,—*Held* he could not be convicted of theft without more evidence. The meaning of the term "*corpus delicti*" explained. ANONYMOUS . . . 7 Mad, Ap, 19

7. ——— *Dishonest taking, Omission of allegation of*—The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad. ANONYMOUS 5 Mad., Ap., 37

8. ——— *Theft of joint property by co-parcener.*—Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession. QUEEN-EMPRESS v. PONNURANGAM . . . I. L. R., 10 Mad., 186

9 ——— *Abetment of theft—Receiving stolen property—Joint undivided*

Demerara by manual labour as a coolie. On his

convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property. EMPRESS v SITA RAM RAI. . . . I. L. R., 3 All, 181

10. ——— *Dispute as to possession of land—Bonâ fide belief as to title—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Code of Criminal Procedure (Act V of 1898), ss. 429 and 439.*—An accused person alleged and claimed that certain paddy was grown upon his jote, and that he cut and removed it as a matter of right

accused. The accused was convicted in a summary trial of the theft of the paddy. In an application ... *Held* ... the ... s as ... rried ... t be ... gard ... pos- ... ; by ... was ... his ... , be-cause he was not in actual possession of them *Per* STEVENS, *J.*—The findings of the lower Court taken as a whole amounted to a finding that the accused acted *malâ fides*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could ... f. ... is ... a ... of ... ie

THEFT—*continued.*

complainant had an apparent title as tenant of the land, together with long possession, and he had on the strength of that apparent title and long possession raised the crops which the accused removed. The application should be dismissed. *Queen-Empress v. Gangaram Santram, I. L. R., 9 Bom., 135,* referred to. *Per* STANLEY, J., *contra*.—That the evidence as well for the prosecution as for the defence conclusively established that there was a *bond fide* dispute as to the title to the land upon which the paddy was sown. Once this was shown, the criminal charge failed. The fact, if it be the fact, that the paddy was sown by the complainant, would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused, it was an act of trespass on the part of the complain-

offence of theft. No such intention has been found on the part of the accused. The conviction and sentence should be set aside. PANDITA *alias* RAHMATULLA PRAMANIK *v.* RAHIMULLA AKUNDO

[I. L. R., 27 Calc., 501
4 C. W. N., 480

11.—————— *Cutting and removing crops under claim not to the crop, but to the*

grown was theirs, and that the crop was sown by one of their tenants, and not by the complainant. A suit

as they had never claimed the crop as belonging to them, they did not act in good faith believing the

12.—————— *Mahomedan married woman—Husband and wife—Taking property of husband.*—A Mahomedan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband. REG. *v.* KHATABAI

[6 Bom., Cr., 9

13.—————— *Hindu woman removing stridhan from possession of her husband.*—A Hindu woman who removes from the possession of her husband, and without his consent, her palla or stridhan, cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence. REG. *v.* NATHA KALYAN

[6 Bom., Cr., 11

14.—————— *Removal by a wife of her husband's property left in her custody.*—There is no presumption of law that a wife and

THEFT—*continued.*

husband constitute one person in India for the purposes of criminal law. If the wife, removing her husband's property from his house, does so with dishonest intention, she is guilty of theft. QUEEN-EMPRESS *v.* BUTCHI . I. L. R., 17 Mad., 401

15.—————— *Removal of family*

ment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner, and that previous to her departure she, by means of false keys supplied to her by the second prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the second prisoner for safe custody. Part of the money was handed to the first prisoner. *Held* that, notwithstanding the acquittal, the prisoners were not entitled to be discharged without trial on the charge of theft. ANONYMOUS . . . 5 Mad., Ap., 23

16.—————— and s. 114—*Forcibly carrying off crop—Want of consent of owner.*—Where a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off

17.—————— *Removal of crop under attachment—Dishonest intention—Madras Rent Recovery Act, s. 8—Notice of distraint.*—Certain crops which had been distrained for arrears

proprietors. The accused were acquitted. *Held* that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dishonestly removed the crops with

[I. L. R., 18 Mad., 384

18.—————— *Person acting under ill-founded claim of right.*—A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. QUEEN *v.* RAM CHURN SINGH 7 W. R., Cr., 57

19.—————— *Removing a thing*
the owner—
charged by
eft of a box,
left it con-
his master.

THEFT—*continued.*

erroneous view of the law. It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss." NABI BAKSH *v.* QUEEN-EMPRESS

[I. L. R., 25 Calc., 416
2 C. W. N., 347

20. ———— *Dishonest intention—Wrongful gain—Wrongful loss.*—A charge of theft will lie under s. 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire dominion over the property taken,

public ferry on the Tadri river He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. *His intention was apparently to compel persons who* had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek The accused had no reason to believe that he was justified in seizing the boat *Held* that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession. QUEEN EMPRESS *v.* NAGAPPA

[I. L. R., 15 Bom., 344

21. ———— *Absence of dis-*

there was nothing in his judgment to show that the petitioner did not *bonâ fide* believe that the paddy belonged to his uncle. *Held* that the findings did not support the conviction for theft. To constitute the offence, it was necessary that the taking

22. ———— and s 143—*Unlawful assembly and theft—Property in crop*

THEFT—*continued.*

As the acts did not amount to theft, which was said to be the common object of the accused, conviction for being members of an unlawful assembly could not stand. PARMESHWAR SINGH *v.* EMPRESS

[4 C. W. N., 345

23. ———— *Removal of debtor's property by the creditor—Penal Code as drafted in 1837, s. 363.*—With a view to coerce the complainant to pay a sum of R14, which he owed to the accused, three head of cattle worth R60 were removed from the complainant's homestead under the order of the accused *Held* the offence of theft was not committed by the accused The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with intention of keeping it himself, or disposing of it for his own benefit or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled."

drafted in 1837 discussed. PROSONNO KUMAR PATRA *v.* UDOY SANT . . I. L. R., 22 Calc., 669

24. ———— *Removal of debtor's property by creditor to enforce payment of debt—Wrongful gain—Wrongful loss.*—A creditor, by taking any moveable property of his debtor from the debtor's possession or without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in s. 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained. *Prosonno Kumar Patro v. Udoy Sant, I. L. R., 22 Calc., 669*, overruled. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO

[I. L. R., 22 Calc., 1017

25. ———— *Removal by creditor of his debtor's property with a view to obtaining payment of his debt.*—*Held* that the removal by a creditor against the will of his debtor of

—continued.

———— Assertion of right —Defence to charge of theft.—A bare y an accused charged with committing proprietary right in the alleged stolen proreason for a Magistrate to refuse to entertain charge of theft. QUEEN v. KALICHARAN [7 B. L. R., Ap., 55

...NOO SINGH v. KALI CHURN MISSER [16 W. R., Cr., 18

...TTER NATH DUTT v. INDRO JALIA [16 W. R., Cr., 76

...URENDRA DAS v. BOLAI AUDHICAREE [16 W. R., Cr., 75

———— Plunder of crops— ...f right to crops.—The mere assertion of a ...of property or right, or the mere existence ...as to right, is not sufficient to justify an ...a case of plunder of crops. The claim ...perty must be proved by evidence to be ...d. NASSIB CHOWDRY v. NANNOO CHOW. [15 W. R., Cr., 47

———— and s. 442— ...eable property.—A boat may be the subject of theft. Although, under s. 442 of the Penal ...for certain purposes classed with houses, it ...ase to be moveable property under s. 378. ...JEHAN DOWALIA 16 W. R., Cr., 63

———— Intention to convert to own use, Want of—Temporary use.—When ...charged with murder was alleged to have ...t from a place where it had been secured ...er, and after proceeding some distance in ...doned it, and when he was charged with ...f the boat,—Held that the charge was un..., inasmuch as it was evidently not his in...convert it to his own use, and make it per...his own property, but ...

———— Property removed ...inal intent, but with consent of owner.—A ... committing ... the ... the ... A in ...t his object. On the prosecution of A for ...ld that, as the property removed was so ...the knowledge of the owner, the offence ...d not been committed. EMPRESS v. TROY...n CHOWDHRY

I. L. R., 4 Calc., 366: 3 C. L. R., 525

———— Possession of forest inspector—Removal of wood without ...of fees.—Possession of wood by a forest ...who is a servant of Government, is possession of Government itself; and a dishonest removal ...out payment of the necessary fees, from his ...

THEFT—continued.

32. ———— Moveable property. —A dug up and immediately carried away without any authority or right several cart-loads of earth, part of unassessed lands of a village. Held that A was not guilty of theft. QUEEN EMPRESS v. KOTAYYA [I. L. R., 10 Mad., 255

33. ———— Earth—Moveable property.—Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land,—Held that he was guilty of theft. *Queen Empress v. Kotayya, I. L. R., 10 Mad.*, 255, dissented from. QUEEN-EMPRESS v. SHIVRAM [I. L. R., 15 Bom., 702

34. ———— and s. 95— Valueless produce—Property almost valueless.—Conviction and sentence by a Magistrate reversed, as the act of which the accused was convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not therefore amount to theft. REG. v. KASYA BIN RAVJI [5 Bom., Cr., 35

35. ———— Retaining possession of nets of poachers.—The prisoner, acting bonâ fide in the interests of his employers and finding a ...

36. ———— Taking fish in navigable river.—The taking fish in that portion of a navigable river over which a right of julkur exists in another person does not fall within s. 378 of the Penal Code. HURI MOTI MODROCK v. DENONATH MALO 19 W. R., Cr., 47

BHUBUN PARUI v. DENONATH BANERJEE [20 W. R., Cr., 15

37. ———— Taking fish from creek.—The wrongful taking of fish from a creek is not theft. QUEEN v. REVU POTHADU [I. L. R., 5 Mad., 390

38. ———— and s. 447— Fishery—Fishing in tank connected with a running stream—Criminal trespass.—Accused were charged with having taken fish from a tank belonging to the ...

THEFT—*continued.*

not in "the possession of" the complainant, and consequently no offence had been committed. *Held* further that, had the fish [illegible] taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the owner of the tank, the conviction would have been upheld. *In the matter of the petition of Madhab Hari, I. L. R., 15 Calc., 390,* distinguished. MAYA RAM SURMA *v.* NICHALA KATANI

[I. L. R., 15 Calc., 402

39. ——— and ss. 143, 404, 426, and 447—*Infringement of exclusive right of fishery in public river—Criminal misappropriation—Mischief—Criminal trespass—Unlawful assembly*.—Fish in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of that right [illegible] ndian [illegible] nlaw- [illegible] in a [illegible] been [illegible], and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed. BHAGIRAM DOME *v.* ABAR DOME

[I. L. R., 15 Calc., 388

IN THE MATTER OF THE PETITION OF MADHAB HARI . . . I. L. R., 15 Calc., 390 note

Contra, MODHOO MUNDLE *v.* UMESH PARNI

[I. L. R., 15 Calc., 392 note

40 ——— s. 379—*Possession—Fish in an enclosed tank.*—Where the accused were found fishing without permission in an enclosed tank belonging to the Municipality of the town of [illegible], it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were therefore restrained of their natural liberty, and liable to be taken [illegible]

41. ——— and ss. 206, 403, 424—*Harvesting crops under attachment*.—A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s. 424. *Per* BENSON, J.—The offence was also criminal misappropriation within the meaning of Indian Penal Code, s. 403. QUEEN-EMPRESS *v.* OBAYYA

[I. L. R., 22 Mad., 151

42. ——— and ss. 403, 425—*Criminal misappropriation—Mischief—Taking bull set at large at Sradha festival in accordance with Hindu religious usage—Res*

THEFT—*continued.*

nullius—Property in Brahmini bull.—A bull d[illegible]

rights as proprietors. *Queen-Empress v. Bandu, I. L. R., 8 All., 51,* followed. *Queen-Empress v. Nalla, I. L. R., 11 Mad., 145,* referred to and commented on. ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL . . I. L. R., 17 Calc., 852

43. ——— *Illegal seizure and impounding of cattle.*—The illegal seizure and [illegible]

44 [illegible]

[illegible] statutes no offence under the Penal Code or the Salt Acts, though the salt becomes liable to detention. REG. *v.* MANSANG BHAVSANG . 10 Bom., 74

45 ——— *Taking salt from swamp surrounded by police—Possession.*—A swamp, the property of Government, having been surrounded with police guards by Government to prevent salt being removed,—*Held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain, of salt which had been spontaneously produced on the swamp was theft. QUEEN *v.* TAMMA GHANTAYA

[I. L. R., 4 Mad., 228

46 ——— and s. 204—*Secreting document produced before arbitrator—Intention—Remoteness of object.*—Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it,—*Held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code. SUBRAMANIA GHANAPATI *v.* QUEEN

[I. L. R., 3 Mad., 261

47. ——— s. 380—*Theft in a building—Requisites for offence.*—All that is necessary in

THEFT—*concluded.*

order to constitute the offence of theft in a building is that the property should be under the protection of the building it is not necessary to show unlawful entrance into the building. QUEEN v. ISHREE PERSHAD . . 24 W. R., Cr., 40

48 ——— — ——— and s 409—*Constables taking property from house under their charge.*—Theft by constables of property from the house they were employed to guard is punishable under s 380, and not s 409, Penal Code QUEEN v. BOIDNATH SINGH . . 3 W. R., Cr., 23

49 — — — s 381—*Theft by servant—Hired boatman*—A hired boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380 QUEEN v. RAWOOL MANJEE . . . . . 8 W. R., Cr., 32

50 - —— ss 381, 409—*Stealing money in accused's charge—Criminal breach of trust.*—The prisoners were charged with having stolen a sum of money shut up in a box and placed in the police treasury buildings over which they, as burkundazes, were placed on guard *Held* that the charge should have been made under s. 381 of the Penal Code (theft by servant in possession of property), and not under s. 409 (criminal breach of trust by public servant). QUEEN v. JUGGERNATH SINGH [2 W. R., Cr., 55

51. ——— ——— - s. 401—*Belonging to a gang of persons associated for the purpose of habitually committing theft—Evidence of bad Character—Evidence Act (I of 1872), s 14 and s. 54 as amended by Act III of 1891.*—The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under s 401 of the Indian Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another and were in the [illegible]

DWARKA BUNIA v. EMPRESS . 4 C. W. N., 97

THEKADAR.

1. ——— Meaning of term.—The term "thekadar" is properly applicable to [illegible]

THEKADAR—*concluded.*

2. — — — — Mode of creation of thekadar's interest—Effect of accepting theka.—A thekadar is ordinarily a person who holds a theka or lease of the whole of a zamindar's interest in a village There is nothing in the law which renders a writing necessary to the creation of such an interest. It is not to be inferred from the mere circumstance that persons accepted a theka that they forewent their existing right. LEELA DHUR v. BHUGWUNT . . . . . 3 N. W., 39

THUMB IMPRESSIONS

See EVIDENCE—CRIMINAL CASES—THUMB IMPRESSIONS . . 1 C. W. N., 33

TICKET.

———— Refusal to produce—

See RAILWAYS ACT, 1871, s 2 [I. L. R., 1 Bom., 25

See RAILWAYS ACT, 1879, ss 17, 31. [I. L. R., 1 Calc., 192

TIMBER.

———— Right to—

See CUSTOM—EVIDENCE OF CUSTOM. [9 W. R., 97

See TREES . . I. L. R., 24 Bom, 31

TIME BARGAIN.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 9 Calc., 791

TITLE.

See CHUR LANDS . 2 B. L. R., P.C., 4 [12 Moore's I. A., 136 17 W. R., 73

See CASES UNDER CLAIMS TO ATTACHED PROPERTY.

See CASES UNDER ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

See CASES UNDER POSSESSION—EVIDENCE OF TITLE.

See CASES UNDER POSSESSION—SUITS FOR POSSESSION—PROOF OF PARTICULAR TITLE.

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

TITLE—*continued.*

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

See CASES UNDER VENDOR AND PURCHASER TITLE.—

———— Acknowledgment of—

See CASES UNDER LIMITATION ACT, 1877, s. 19 (1871, ART. 143)—ACKNOWLEDGMENT OF OTHER RIGHTS

———— Approval of, by Solicitor.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 17 Calc., 919

———— Decision of Revenue Court as to—

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

———— Declaration of suit for—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE

See CASES UNDER ONUS OF PROOF—DECLARATION OF TITLE.

———— Denial of—

See CASES UNDER ESTOPPEL—DENIAL OF TITLE.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
[I. L. R., 12 Bom., 678
I. L. R., 15 Bom., 407, 414 note, 415 note
I. L. R., 17 Bom., 631
I. L. R., 18 Bom., 110
I. L. R., 17 All., 45
I. L. R., 20 Bom., 759
I. L. R., 24 Bom., 426

See CASES UNDER LANDLORD AND TENANT FORFEITURE—DENIAL—TITLE.

———— Evidence of—

See CASES UNDER POSSESSION—EVIDENCE OF TITLE.

———— Extinction of—

See CASES UNDER LIMITATION ACT, 1877, s 28

See RELINQUISHMENT OF TENURE.
[I. L. R, 1 Bom., 91, 208

———— Notice of—

See CASES UNDER VENDOR AND PURCHASER—NOTICE.

———— Proof of—

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

See CASES UNDER POSSESSION—EVIDENCE OF POSSESSION

See CASES UNDER POSSESSION—EVIDENCE OF TITLE.

TITLE—*continued.*

———— Question of—

See APPEAL—NORTH-WEST PROVINCES ACTS . . . I. L. R., 1 All., 366
[I. L. R., 3 All., 63
I. L. R., 4 All., 237
I. L. R., 9 All., 445
I. L. R., 11 All., 328
I. L. R., 13 All., 364
I. L. R., 14 All., 500
I. L. R., 18 All., 210

See BENGAL RENT ACT, 1869, s. 27.
[I. L. R., 8 Calc., 365
I. L. R., 9 Calc., 280, 423
9 C. L. R., 253
I. L. R., 12 Calc., 606
I. L. R., 14 Calc., 624

See CASES UNDER BENGAL RENT ACT, 1869, s. 102.

See BENGAL TENANCY ACT, s. 149
[I. L. R., 17 Calc., 829
I. L. R., 14 Calc., 537

See BENGAL TENANCY ACT, SCH. III, ART. 3 . . I. L. R., 16 Calc., 741

See CERTIFICATE OF ADMINISTRATION—PROCEDURE . I. L. R., 3 Calc., 616
[I. L. R., 6 Calc., 303
I. L. R., 15 Calc., 574
I. L. R., 17 Mad., 477
I. L. R., 23 Calc., 431

See DEKKAN AGRICULTURISTS' ACT, s 3.
[I. L. R., 16 Bom., 128

See INSOLVENT ACT, s. 26.
[I. L. R., 3 Calc., 434

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[I. L. R., 13 All., 309

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS.
[I. L. R., 1 Bom., 624

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.
[I. L. R., 15 Mad., 223
I. L. R., 17 Mad., 140

See JURISDICTION OF REVENUE COURT—N.-W. P. RENT AND REVENUE CASES.
[W. R., 1864, Act X, 116
1 W. R., 36
2 Agra, Rev., 9
3 N. W., 141
I. L. R., 9 Calc., 925

See LETTERS OF ADMINISTRATION.
[I. L. R., 21 Calc., 344

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.
[I. L. R., 14 Calc., 169

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE
[I. L. R., 14 Bom., 627

TITLE—*continued*

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

See CASES UNDER RES JUDICATA—COMPETENT COURT—SMALL CAUSE COURT CASES

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTIONS OF.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY.

See CASES UNDER SPECIAL OR SECOND APPEAL — SMALL CAUSE COURT SUITS—TITLE, QUESTION OF.

———— Slander of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE
[I. L. R., 1 Mad., 65

Warranty of—

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY.
[4 Bom., A. C., 111
6 Bom., A. C., 258
12 W. R., 41
I. L. R., 2 All., 103, 828

See CASES UNDER VENDOR AND PURCHASER.

1. EVIDENCE AND PROOF OF TITLE

(a) GENERALLY

1. ———— Evidence of title *Oral evidence.*—Where the Principal Sudder Ameen, reversing the decision of the Munsif, dismissed a claim to the

believed, may be as good for proving a man's title as documentary evidence. DURBAN FAKEER *v.* NOBINCHANDRA MAZUMDAR
[1 B. L. R., S. N., 16: 10 W. R., 217

2. ———— *Documentary evidence in India*—The presumption in favour of the genuineness of documents offered in evidence in India is very weak, but it must not be held that the presumption is in favour of forgery, and when a long series of documents is produced showing a reasonable origin of title

dents' title by purchase in 1833, the evidence of extrinsic improbability should be very strong indeed to counterbalance the weight of such testimony. WISE *v.* BHOOIUN MOYEE DEBIA
[3 W. R., P. C., 5: 10 Moore's I. A., 165

3. ———— *Pottah granted by Collector.*—A pottah of land in Calcutta granted by

TITLE—*continued*.

1. EVIDENCE AND PROOF OF TITLE—*continued*.

the Collector is not a monument of title, but only evidence of a holding according to a local and fiscal regulation. FREEMAN *v.* FAIRLIE
[1 Moore's I. A., 305

4.

jecting the forged documents, will take the unim-

10 Moore's I. A., 101

5. ———— *Suit for possession.*—In a suit to recover possession of land which both the plaintiff and defendant claimed to have reclaimed from jungle and to have possessed many

possession, to entitle him to a decree GOLAM REZA CHOWDHRY *v.* CHANDOO MEAH LUSHKUR
[15 W. R., 45

6. ———— *Possession—Presumption.*

case, be regarded, and that with the aid of it there is stronger probability that the case of the side that had possession was true than that of the party out of possession. RUNJEET RAM PANDAY *v.* GOBERDHUN RAM PANDAY . . 20 W. R., P. C., 25

7. ———— *Possession—Limitation Act (XV of 1877), arts. 143, 144—Conflicting evidence of possession—Presumption of title.*

v. HUR PERSHAD SINGH . I. L. R., 12 Calc., 38

8. ———— It is only when the evidence of possession is strong on both sides and apparently equally balanced that the presumption that possession goes with title should prevail. The principle does not apply when the evidence of possession is equally unworthy of reliance on both sides *Dharm Singh* v *Hurpershad Singh, I. L. R., 12 Calc., 38,* explained THAKUR SINGH *v.* BHOOBRAJ SINGH . . . I. L. R., 27 Calc., 25

9. ———— *Possession, Presumption of—Waste lands*—In disputes as to the right to the possession of jungle lands, it is only in cases where neither party has exercised any

TITLE—*continued.*

1 EVIDENCE AND PROOF OF TITLE —*continued.*

acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the party proved to have the title has also possession. RAM BANDHU *v.* KUSU BHATTU [5 C. L. R., 481

10 ——— *Suit for possession—Possession of title-deeds and receipts for*

that A, who was in possession of the title-deeds and of the receipts of rent, ought to succeed, unless there was something on the record to countervail such strong evidence KODA BUKSH KHAN *v.* CHOA [10 W. R., 162

11 ——— *Suit for declaration of title—Onus probandi—Production of title-deeds*—The plaintiff sued for declaration of her title to property ... but of w ... of herself ... disprove t ... not allowed to raise certain fresh issues, but the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. SWARNAMAYI RAUR *v.* SRINIBASH KOYAL . 6 B. L. R., 144

12. ——— *Possession—Uninterrupted and undisputed possession.*—Uninterrupted and undisputed possession for a long time

13 ——— *Suit for possession.*—Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendant, the lower Appellate Court threw upon the defendant the burden of proving his title, and, on his failing to do so, decreed the case. *Held* that this was a fair infer... sess... to ... *v.* ... CHARJI . 3 B L. R, A. C., 298: 12 W. R, 175

14. ——— *Proof of title—Suit for possession*—In a suit to recover possession on the allegation that plaintiff had been illegally

possession The Judge found that the estate was really let out in ijara to the plaintiffs by the defendant, who had recovered rents and granted him receipts on account of the ijara mehal. *Held* that this

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

was a complete finding in favour of the plaintiff's

PERSHAD SINGH . . . 13 W. R., 2

15. ——— *Proof of title—*

BHUTTACHARJEE *v.* DOORJO DHUN SHIKDAR [7 W. R., 89

16 ——— *Possession—Evidence Act, s. 110—Specific Relief Act, 1877, s 9—* In a suit for possession, where the plaintiff proved

J., dissentiente) that the prior possession of the

that possession shall always be *primâ facie* evidence of title. KAWA MANJI *v.* KHOWAZ NUSSIO [5 C. L. R., 278

17. ——— *Possession—* ... disputed

attachment by Government for a period of ... taken regarding ... ndar of ... lector of ... recover ... by him.

the Government was ordered to restore the ... to him. ZAMINDAR OF RAMNAD *v.* ZAMINDAR OF YETTIAPOORAM . . 10 Moore's I. A., 47

TITLE—*continued*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

18. ———— *Proof of possession—Suit for possession.*—In a suit to recover possession of two plots as parcels of the plaintiff's ancestral jammai lands, the Court of first instance

that both plots were parcels of the jammai. *Held*, reversing the decision of FIELD, J, that on second appeal the High Court was not entitled to question the sufficiency of that evidence, and, further, that one plot having been found to be parcel of the jammai, it was sufficient to give evidence of possession and ownership to prove that the other plot was also parcel. *Dadabhai Narsidas v. Sub-Collector of Broach, 7 Bom., A. C., 82,* distinguished BARODA KANTO BEEPARI *v.* JODHISTEER NATH

[10 C. L. R., 99

19. ———— *Registration after proclamation—Evidence of assertion of title*—The act of registration after a proclamation under s. 20, Regulation XXXVII of 1793, amounts to a public, open, and notorious assertion of title on the one side, and the omission to register, unexplained by proof of the ill-health of the claimant, or absence in a distant country, or ignorance, affords an equally strong presumption of the non-existence of any title on the other. USUDOOLLAH *v.* IMAMAN

[5 W. R., P. C., 26: 1 Moore's I. A., 19

20. ———— *Proof of title—Registration in Collector's books.*—Registration in the Collector's books is not of itself a proof of title. GOBIND NATH SEIN *v.* GOBIND CHUNDER SEIN

[10 W. R., 393

AMEEROONISSA BIBEE *v.* WOOMAROODDEEN MAHOMED CHOWDHRY . . 14 W. R., 49

21. ———— *Entry in Collector's books—Proof of title*—The Collector's book is

the title of any other person. FATMA KOM NURI SAHEB *v.* DARYA SAHEB . . 10 Bom., 187

COLLECTOR OF POONA *v.* BHAVANRAV BALKRISHNA [10 Bom., 192

SANGAPA MALAPA *v.* BHIMANGOWDA MARIAPA [10 Bom., 194

22. ———— *Entry of name in Collector's book*

Collector's book is kept for purposes of revenue, not for purposes of title. *Fatma v. Darya Saheb, 10 Bom., 187,* followed. BHAGOJI *v.* BAPUJI

[I. L. R., 13 Bom., 75

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

23. ———— *Co-proprietors—Registration of shares in land.*—Registration of land under Bengal Act VII of 1876 is not only no conclusive proof, but no evidence at all, upon the

[I. L. R., 8 Calc., 853

See also SARASWATI DASI *v.* DHANPUT SINGH [I. L. R., 9 Calc., 431: 12 C. L. R., 12

24. ———— *Resumption chittas*—Government resumption chittas, in the absence of the resumption-proceedings, are not conclusive evidence of title as against third persons. *Ram Chunder Rao v. Bunsee Dhur Naik, I. L. R., 9 Calc., 741,* followed DWARKA NATH MISSER *v.* TARITI MONI DABIA . I. L. R., 14 Calc., 120

25. ———— *Dispute as to*

26. ———— *Possession—Alleged title by adverse possession for more than the period of limitation*—Land bordered by the

than twelve years' adverse possession by having settled tenants on the disputed ground. To entitle her, it was necessary for her, the burden of proof being upon her, to prove that she had held a possession adequate in continuity, in publicity, and in extent of area. Upon all these points her case was deficient, and therefore her claim failed. It was also in evidence, which was the more substantial, that the

[I. L. R., 27 Calc., 943
L. R., 27 I. A., 136
4 C. W. N., 597

27. ———— *Ownership, Evidence of—Evidence of titles contested between rival purchasers—Benami transaction—Declaratory decree, Suit for.*—Under the Land Registration Act (Bengal Act VII of 1876), registration of ownership was refused on the application of two rival purchasers of the same property, and a reference concerning

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

through the son-in-law, from whose sons the defendant had purchased the property, the latter had obtained a good title. No actual possession was established by either of the parties. The property had been let in parcels to different tenants. Among other

SIDDIK . . I. L. R, 26 Calc., 11 [L. R., 25 I. A., 225

28. ——— *Survey map—Suit for possession—Ejectment—Evidence of possession and title.*—In a suit for possession of certain

title, and the decree of the lower Court was correct. *Mohesh Chundra Sen v Juggut Chundra Sen, I. L. R., 5 Calc., 212,* discussed. SYAM LAL SAHU *v* LUCHMAN CHOWDHRY . I. L. R., 15 Calc., 353

29. ——— *Transfer of property—Surrender of dar-mokurari lease—Formal deed unnecessary.*—Where a mokuraridar granted a dar-mokurari lease of part of his holding which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but, not being registered, were not receivable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBUNDI BEGUM *v.* KAMLESWARI PERSHAD [I. L. R., 14 Calc., 109 L. R., 13 I. A., 160

30. ——— *Hypothecation—Decree for enforcement of lien—Objection to attachment and sale raised by person not a party to decree—Release of property from attachment—Suit by decree-holder for declaration of right based on decree—Defence based on sale-deed found to be fraudulent—Plaintiff entitled to succeed on basis of his decree without further proof of title.*—An objection to the attachment and sale of a house which

SALIG RAM . . . I. L. R., 9 All., 412

31. ——— *Commission of partition.*—Under a commission of partition issued by the Supreme Court, land in Calcutta was apportioned among the members of a family, and the allotments were confirmed by final decree in 1825. In this suit, brought in 1884, the plaintiff claimed, through one of the family, a parcel of land, by reference to one of the allotments so made. The

Court for the whole. It appeared to the Judicial Committee that there was no ground for assuming that the members of the family, who were parties to the partition suit, were under any mistake as to the family property, or that there was any error, or want of due care, on the part of the commissioners of partition, whose proceedings had been regular, nor had there been any adverse claim to any part of the allotted land. The first Court's decree was restored. SARODA PROSUNNO PAL *v.* SHAM LAL PAL . . I. L. R., 19 Calc., 618 [L. R., 19 I. A., 75

32. ——— *Mirasi title—Payment of rent—Presumption.*—Continuous payment of rent for about a hundred years held to give

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

rise to a presumption that the tenant held under a mirasi title. BRAJANATH KUNDU CHOWDHRY *v.* LAKHI NARAYAN ADDI . . 7 B. L. R., 211

33. ——— *Title confirmed by decree*—Where a proprietary title is affirmed by a decree, the property is not subsequently held under the decree alone, but under the original title AMRIT KOOER *v.* ROOP KOOER

[2 N. W., 459: Agra, F. B., Ed. 1874, 240

(*l*) LONG POSSESSION

34. ——— *Title by long possession—Adverse possession—Limitation.*—Twelve years' continuous possession of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer. *Semble*—Such title may be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by possession GOSSAIN DASS CHUNDER *v.* ISSUR CHUNDER NATH . I. L. R., 3 Calc., 224

See GOLUCK CHUNDER MASANTA *v* NUNDÓ COOMAR ROY

[I. L. R., 4 Calc, 699: 3 C. L. R., 450

35. ——— *Title by long possession—Adverse possession—Limitation—Grant made by wife during absence of husband*—A wife, during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent husband's property, made a mirasi grant of a portion of her husband's estate The grantee entered into and remained in possession for upwards of twelve years *Held* that the position of the grantee was not that of a lessee, and that his

other does not, by mere denial of that other's title, make his possession adverse, so as to give himself the benefit of the statute of limitation. BEJOY CHUNDER BANERJEE *v.* KALLY PROSONNO MOOKERJEE . . . . I. L. R., 4 Calc., 327

36. ——— *Declaration of title—Adverse possession—Variation between pleading and proof.*—A declaration of title may be made upon proof of twelve years' adverse possession. Such declaration cannot, however, be given on a title not distinctly stated in the plaint or in the issues. SHIBO KUMARI DEBI *v.* GOVIND SHAW TANTI . . . I. L. R., 2 Calc., 418

37. ——— *Suit for declaration of title—Failure to prove stated title—Title by long possession*—In a suit for a declaration of

is to extinguish other titles, if these existed, and the plaintiffs ought to have the declaration sought. RAM LOCHUN CHUCKERBUTTY *v.* RAM SOONDER CHUCKERBUTTY . . 20 W. R., 104

JUGGUT CHUNDER *v* BANEE MADHUB BANERJEE [23 W. R., 205

38. ——— *Proof of title—Possession for period of limitation.*—Plaintiff, stating that he was obstructed in the cultivation of certain land which belonged to him, asked that the obstruction be removed and damages granted The

for the period of the statute will not justify the declaration, which, allowing it to be made, ought to be based upon a finding of the title alleged by plaintiff, and not upon the existence of a possession for the period required by the statute to bar the action

[6 Mad., 420

39. ——— *Presumption arising from possession—Issue as to identity of land re-formed on a site formerly submerged.*—In a suit for the possession of a chur, formerly carried away and afterwards re-formed upon its former site, the

remanded the suit for judgment on this issue, where-

plaintiffs. Upon a second appeal the High Court reversed the decree of the Appellate Court, and dismissed the suit, on the ground that there was an entire absence of evidence as to which party was entitled at the date to which the dispute related. *Held* that this was erroneous. On a question of

[I. L. R., 14 Calc, 740
L. R., 14 I. A., 101

40. ——— *Mokurari maurasi title, Evidence of—Presumption of permanent tenure.*—A person claimed to hold a mokurari

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

maurasi title to certain land which was acquired under the Land Acquisition Act, but could produce no pottah or evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt. *Held* that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the lakhirajdar, had made no attempt to eject him or his predecessors in title during this long period. DUNNE *v.* NOBO KRISHNA MOOKERJEE . I. L. R., 17 Calc., 144

41. ———— *Suit to oust shebait from office—Tenure of office for a period greater than that provided by law of limitation.*—The plaintiff, as shebait of a certain Hindu endowment, instituted a suit to set aside certain leases and alienations created by one who had formerly been

that the plaintiff had held possession as shebait, and managed the properties connected with the endowment for more than ten years, on the nomination of the Hindu residents of the locality, the defendants put the plaintiff to proof of his title as shebait. The lower Courts found that the plaintiff had failed to prove h

had no

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having held the office for a period exceeding that provided by the law of limitation, he had acquired a

NATH DAS *v.* BIRBHADRA DAS [I. L. R., 19 Calc., 776

42. ———— *Presumption of title—Onus of proof—Madras Forest Act (Mad. Act V of 1882), s. 6.*—Certain land was notified under the Madras Forest Act, 1882, to be constituted a reserved forest. A person, alleging that the jenm title had been in his family for six or seven centuries, claimed to be the owner of the land. His claim was contested by Government on the allegation that the land had belonged to another family and had been escheated. The claimant admitted that he had not been in possession for six years before the date of the notification, Government having objected to his interfering with the land. It was found that his family had been in possession for the previous sixty years at least, and that the alleged escheat was not proved. *Held* that the claim should be allowed.

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*concluded.*

43. ———— Proof of title—*Suit for declaration of title—Adverse possession—Case made in plaint.*—Where a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of appeal upon a title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised in the Court of first instance with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. KRISHNA CHURN BAISACK *v.* PROTAB CHUNDER SURMA . I. L. R., 7 Calc., 560

44. ———— *Adverse possession—Unregistered deed of sale.*—On the 18th

him. The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from *G* under a deed of sale dated 5th January 1865, and that he had been in possession since that

years prior to the institution of the suit was adverse both to *G* and *N*, and that the claim of the plaintiff, who was assignee of their interest, was consequently barred. *Balaram Nemchand v. Appa, 9 Bom., 121,* explained. *Somu Gurrukal v. Rangammal, 7 Mad., 13,* referred to and followed. SAMBHUBHAI KARSANDASS *v.* SHIVLALDASS SADASHIVDASS [I. L. R., 4 Bom., 89

45. ———— *Long possession—Liability to assessment of revenue.*—A title to hold land free from assessment to revenue cannot be acquired by any length of possession revenue-free. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAM UGRAH SINGH . I. L. R., 7 All., 140

2. MISCELLANEOUS CASES.

46. ———— Right to raise question of title—*Boundary dispute—Suit for possession.*—In a boundary dispute the title of the plaintiff is not, except under very peculiar circumstances, open to attack; but when the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but claiming a right thereto under a superior title, then the defendant has a right to call the plaintiff's title in question. RAMCHUNDER BANERJEE *v.* MUDDUNMOHUN TEWAREE [W. R., 1864, 355

TITLE—*continued.*

2. MISCELLANEOUS CASES—*continued.*

47. ——— *Suit for possession of land held under superior holders.*—The plaintiff sued to recover possession of certain lands said to have been included in a talukh pottah given him by the zamindars, alleging that the defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9 annas [illegible] process [illegible] under [illegible] it, not- [illegible] under a [illegible] o have his title put in issue and determined. NAGUR CHAND *v.* DOORGA DOSS CHOWDHRY [11 W. R., 137

See DINOMONEE BANERJEE *v.* GYRUTOOLLAH KHAN . . 2 W. R., 138

48. ——— Onus probandi—*Proof of* [illegible] Courts agree in holding that he has not done so, even though the High Court may not have attended to [illegible]

49. ——— *Claim under particular title—Presumption.*—Where a plaintiff claims, not under any general right of inheritance, but expressly under a deed, he must prove that deed; no legal presumption as to the contents of the deed can arise from a consideration of what the party, through whom he claims, would have been entitled to by the law of inheritance, had there been such a deed. MOOAD MULLICK *v.* BELAT MULLICK [9 W. R., 385

50. ——— *Possession—Proof of title and possession—Suit for injunction—Hindu law.*—K C, a Hindu, died in March 1864, possessed among certain other property of a house, and leaving three sons, R, B, and T. He also left a will, of which he appointed R executor, and declared that "the whole of my estate, both real and personal, [illegible] of the will and a caveat was entered by B, but the opposition was withdrawn on a compromise, and the will was proved; the compromise, however, was [illegible]

TITLE—*concluded.*

2. MISCELLANEOUS CASES—*concluded.*

default in payment of the mortgage-debt, the defen- [illegible] 1869, and subsequently a decree for possession. In [illegible] might be restrained by injunction from proceeding to sale, and his mortgage be brought into Court and cancelled. *Held* that, to entitle them to relief, they must prove their title as well as their possession, and, on failure to do so, the suit must be dismissed. ROOPLALL KHETTRY *v.* MOHENDRA NATH ROY [10 B. L. R., 271 note

51. ——— False deed set up in support of rightful claim.—A party is not precluded from succeeding upon a title established by a genuine deed, because he sets up a false deed which, if [illegible]

52. ——— Transfer of property— [illegible] BEGUM *v.* KUMLESWARI PERSHAD [L. R., 13 I. A., 160 : I. L. R., 14 Calc., 109

TITLE-DEEDS.

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION. [I. L. R., 11 Bom., 485

See VENDOR AND PURCHASER—TITLE [I. L. R., 15 Bom., 657

——— Delivery of, for specific purpose.

See ATTORNEY AND CLIENT. [15 B. L. R., Ap., 15

——— Deposit of—

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . . 6 B. L. R., 701 [I. L. R., 19 All., 76 L. R., 23 I. A., 106

See NEGOTIABLE INSTRUMENTS ACT, s. 13 [I. L. R., 17 Mad., 85

TITLE-DEEDS—*concluded.*

——— Possession of—

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH EVIDENCE [2 W. R., P. C., 1
8 Moore's I. A., 467

See REGISTRATION ACT, 1877, s 50. [I. L. R., 18 Bom., 444

——— Production of—

See INSPECTION OF DOCUMENTS. [5 Bom., O. C., 152
I. L. R., 10 Calc., 808

See ONUS OF PROOF—DECLARATION OF TITLE . . 6 B. L. R., 144

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY 6 B. L. R., 144
[19 W. R., 162

——— Refusal to produce—

See RIGHT OF WAY. [I. L. R., 15 All., 270

——— Suit to recover—

See JURISDICTION—SUITS FOR LAND—GENERAL CASES I. L. R., 4 Calc., 322

See LIMITATION ACT, 1877, ART 49. [I. L. R., 15 Mad., 157

TITLES OF HONOUR.

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS. [12 B. L. R., 443, 445 note

TODA GARAS HAQ.

See DUTIES. [2 Bom., 253; 2nd Ed, 239
7 Bom., A. C., 50

See LIMITATION ACT, 1877, ART 144—IMMOVEABLE PROPERTY. [13 B. L. R., 254
L. R., 1 I. A., 34

See PENSIONS ACT, 1871, ss 3 AND 4. [I. L. R., 1 Bom., 203
I. L. R., 4 Bom., 443
I. L. R., 5 Bom., 408
L. R., 8 I. A., 77

See PENSIONS ACT, 1871, s. 11 [I. L. R., 4 Bom., 432

TODDY.

See BOMBAY ABKARI ACT, 1878, ss. 3, 14, AND 24 . . I. L. R., 6 Bom., 398
[I. L. R., 9 Bom., 462
I. L. R., 18 Bom., 428

See BOMBAY REVENUE JURISDICTION ACT, 1876 . . I. L. R., 9 Bom., 462

TOLLS.

See SETTLEMENT—CONSTRUCTION. [I. L. R., 17 Calc., 458

——— Lease of—

See BOMBAY TOLLS ACT, s 7. [I. L. R., 20 Bom., 668

——— Non-liability to—

See MADRAS LOCAL BOARDS ACTS, s 87 [I. L. R., 20 Mad., 18

——— Suit for, paid in excess.

See BENGAL ACT IX OF 1871, s 27. [I. L. R., 15 Calc., 259

1. ——— Lessee of tolls—*Act VIII of 1851.*—[illegible]
emplo[illegible]
withi[illegible]
MATTE[illegible]

2 ——— Illegal collection of tolls—*Act VIII of 1851, s 6—Public road.*—To justify a conviction under s. 6, Act VIII of 1851, for illegal collection of a toll on a public road, it was necessary that the road should be a public road within the meaning of s 2 of the Act. IN RE NARENDRONARAIN SINGH . . . . . 6 W. R., Cr., 48

3. ——— Illegal demand of toll—*Act VIII of 1851, s 6*—[illegible]

[illegible]

resolution of the Government, notified in some way or other by the Government. The word "extortionately" in s. 6 of Act VIII of 1851 is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand of toll accompanied by pressure, the pressure in this case being the exercise [illegible]

[illegible] [22 W. R., Cr., [illegible]

TORT.

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS.

See ENCROACHMENT. [I. L. R., 17 Mad., 368

See MINOR—LIABILITY FOR TORTS [3 N. W., 181

——— Action framed in—

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS. [I. L. R., 24 Calc., 265

TORT—*concluded.*

See Right of Suit—Survival of Right [I. L. R., 13 Bom., 677

See Wrongful Distraint. [I. L. R., 25 Calc., 285

TORT FEASORS

See Cases under Contribution, Suit for—Joint Wrong-doers

See Res Judicata — Parties — Same Parties or their Representatives [I. L. R., 14 Bom., 408

TORTURE

See Abetment—Torture [7 W. R., Cr., 3
21 W. R., Cr., 11

See Police Officer 7 W. R., Cr., 3

TOTAL LOSS

See Insurance—Marine Insurance [6 B. L. R., 218: 7 B. L. R., 347
3 Bom., A. C., 1
Bourke, O. C., 17, 228

TOWAGE, LIEN FOR—

See Bottomry Bond . 6 B. L. R., 323

TOWAGE CONTRACT

See Action in rem [I. L. R., 10 Calc., 865

TOWING, RULES FOR—

See Steam Tugs . . . 1 Hyde, 293
[2 W. R., P. C., 51: 8 Moore's I. A., 103

TOWN DUTIES, BOMBAY

——— Act XIX of 1844—*Suit to levy a tax on cotton and cotton seeds purchased in, and exported from, Broach—Cess illegal—Agency—Trust.*—The plaintiff, manager and part proprietor of a Vallabhacharya temple at Broach, sued the defendant to establish the right of the temple to levy a cess on cotton and cotton seed purchased in Broach and exported from it. The defendant denied the plaintiff's right and contended (*inter alia*) that, even if the right existed until 1844, it was then abolished by Act XIX of that year, which "enacted that from the first day of October 1844 all town duties, kusubviras, mohtarphas, baluti taxes, and cesses of every kind on trades and professions, under whatsoever name, levied within the Presidency of Bombay, and not forming a part of the land revenue, shall be abolished" *Held* that Act XIX of 1844 applied to the cess claimed by the plaintiff The expression "cesses of every kind" included the cess on cotton and cotton seeds, and absolutely put an end to the right, if any existed, of the Government or of any private individual of levying the same *Held* also the suit could not be regarded as a suit for money had and received by the defendant to the plaintiff's use, or as one to recover money received by the defendant as trustee or agent Gosvami Shri Purushotamji Maharaj *v.* Robb [I. L. R., 8 Bom., 398

TRADE.

——— Contract in restraint of—

See Cases under Contract Act, s. 27.

TRADE MARK.

See Damages Measure and Assessment of Damages—Torts [I. L. R., 10 Bom., 617.

See Injunction—Special Cases—Trade Mark . 3 B. L. R., Ap., 4
[Cor., 150
I. L. R., 17 Bom., 584

1 ——— Injunction to restrain use of trade marks—*Combination of figures*—The plaintiffs, from 1872, imported and sold an article described as 7¼lb grey shirtings, and marked as follows "In the centre of each piece of cloth a stamp in blue colour of a turtle in a star, with the words 'trade mark'; underneath, in a semi-circular form, is the name 'Fleming, Galbraith & Co, Manchester,' and under this the number 39 within a star, and at the bottom of each piece the number 2008." In 1877 the plaintiffs discovered that the defendants were importing from the same manufacturers, and selling cloth of a similar quality marked as follows "A stamp in blue colour of a rose in a square; underneath are the words 'Ralli and Mavrojani' arranged in a semi-circular form, and under this the number 39 in a star, and at the bottom the number 2008." On the facts of the case the lower Court (Macpherson, *J.*) granted an *interim* injunction to restrain the defendants from so mark- [illegible] —If the imitation of the plaintiffs' marks generally, or the use of the number 2008 in particular, would be calculated to deceive or mislead the public, the [illegible] purchasing goods imported by the plaintiffs *Per* Markby, *J*—The number 2008 was not part of the plaintiffs' trade mark proper, nor on the evidence was it so associated with the plaintiffs' name as to indicate to the public that the goods bearing that number came only from the plaintiff's firm as importers; on the evidence it was merely a quality mark, and therefore

TRADE MARK—*continued.*

not calculated to mislead the public into the belief that they were purchasing the plaintiffs' goods, while in fact they were purchasing those imported by the defendants *Semble*—There may be a right to exclusive use of a trade mark by traders who are importers only. RALLI *v.* FLEMING

[I. L. R., 3 Calc., 417 : 2 C. L. R., 93

2. ———— Right to use of trade mark—

3. ———— Restraining use of trade mark—*Evidence of fraud.*—The ground upon which a person is restrained from using another's trade mark is that he is gaining an advantage by the use of a particular trade mark which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. EWING *v.* GRANT, SMITH & CO. . 2 Hyde, 185

BALFOUR & CO. *v.* KILBURN & CO

[1 Hyde, 270

4. ———— Possession and use of trade mark—*User in foreign market—Abandonment—*

5. ———— Right of exclusive user—*Infringement—Combination of numerals as a trade mark—Injunction.*—The question of the right to the exclusive user of a trade mark or trade number is largely, if not entirely, a question of fact, and

TRADE MARK—*continued.*

right of exclusive user of that number. There must

being deceived; it is not enough to show a mere possibility of deception. BARLOW *v.* GOBINDRAM

[I. L. R., 24 Calc., 364

1 C. W. N., 281

6. ———— Offence of using false or counterfeit trade-mark—*Penal Code (Act XLV of 1860), ss. 482, 486—Prosecution after one year from first discovery of offence—Limitation—Merchandise Marks Act (IV of 1889), s. 15—*

... that goods ... d to be a ... rsons so ... alleged ... count of

sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced. *Held* that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time-barred under s 15 of the Indian Merchandise Marks Act, 1889; and that the complainant must enforce his remedy by civil process RUPPELL *v.* PONNUSAMI TEVAN

[I. L. R., 22 Mad., 488

7. ———— Selling books with counterfeit property mark—*Penal Code (Act XLV of 1860), s. 486—Goods—Indian Merchandise Marks Act (IV of 1889).*—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian

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RADHA SHYAM BASACK . I. L. R., 28 Calc., ...

[3 C. W. N., 97

8. ———— User of and property in trade mark—*Proof of trade mark—Importation and sale of articles with particular marks impressed upon them—Succession by one Bank to business of another—Merchandise Marks Act (IV of 1889), s. 3—Penal Code (Act XLV of 1860), ss. 485 and 486.*—A mark to be a trade mark must be a mark ... manufacture

The mere ... bars with a ... ark which ... to a Bank ... of ... the ... hat

TRADE MARK—*concluded.*

it was a continuation of that Bank under another name, or that it succeeded to the business or acquired the good-will of that Bank, was held not to be sufficient to establish that the mark was the trade mark of the new Bank. ANOOKOOL CHUNDER NUNDY *v.* QUEEN-EMPRESS . I. L. R., 27 Calc., 776

ANOOKOOL CHUNDER NUNDY *v.* EMPRESS [4 C. W. N., 423

TRADER.

See INSOLVENT ACT, s. 7.
[I. L. R., 7 Bom., 411
I. L. R., 13 Calc., 63

See INSOLVENT ACT, s. 9.
[I. L. R., 5 Calc., 605
I. L. R., 20 Calc., 771
I. L. R., 23 Calc., 26
L. R., 22 I. A., 162

See INSOLVENT ACT, s. 60.
[I. L. R., 5 Bom., 1
2 Hyde, 1, 177
7 Bom., O. C., 22
I. L. R., 21 Calc., 1018

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 53
[I. L. R., 17 Mad., 100

TRADESMAN'S ACCOUNT.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERALLY.
[I. L. R., 2 Bom., 570

TRAFFIC SUPERINTENDENT OF RAILWAY.

See RAILWAYS ACT, 1890, s. 77.
[I. L. R., 24 Calc., 306
I. L. R., 22 Mad., 137

TRAMWAYS.

See BOMBAY TRAMWAYS ACT.
[I. L. R., 22 Bom., 739

TRANSFER.

——— Instrument of—

See STAMP ACT, 1869, SCH. II, ART. 33.
[I. L. R., 2 Calc., 399

——— Registration of—

See CASES UNDER BENGAL RENT ACT, 1869, s. 26.

See CASES UNDER BENGAL RENT ACT, 1869, s. 46.

See CASES UNDER LANDLORD AND TENANT—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

See CASES UNDER LANDLORD AND TENANT—TRANSFER BY TENANT.

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE . 13 B. L. R., 146

TRANSFER—*concluded.*

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . . . 9 W. R., 161
[7 W. R., 409
Marsh., 212
1 W. R., 225

TRANSFER OF CIVIL CASE.

	Col.
1. GENERAL CASES . . .	9150
2. LETTERS PATENT, HIGH COURT, CL. 13	9158
3. GROUND FOR TRANSFER . . .	9162

1. GENERAL CASES.

1. ——— Power to transfer—*Mad. Reg.*

2. ——— *Transfer to Munsi*

3. ——— *Case remanded for local inquiry.*—A case remanded to a District Judge for the purpose of a local inquiry cannot be transferred to a Subordinate Judge for disposal. CHOWDRY HAMEDOOLLAH *v.* MUTSEOONISSA BIBEE [15 W. R., 574

4. ——— *Power of Judge to transfer case under Act XVI of 1868.*—A Judge had no authority under Act XVI of 1868 to order a

causes of any value. SUFEEOOLLAH SIRCAR *v.* BEGUM BIBEE . . . 25 W. R., 219

6. ——— *Civil Procedure Code, 1859, s. 6—Withdrawal of suits from subordinate Courts—Remand by higher Court—Fresh suit.*—The power given by s. 6 of Act VIII of 1859 to a

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

7. ——— Civil Procedure Code (1882), s 25—*Suit transferred to his own file by District Judge – Appeal to High Court—Remand to District Judge under s. 562 of the Civil Procedure Code—Power of Judge to transfer.*—By order of a District Judge under s. 25 of the Code of Civil

Court of the District Judge. The latter transferred the suit so remanded for trial to the Subordinate Judge *Held* that the District Judge had then no power to transfer the suit, but was bound to try it himself *Semble*—That s. 25 of the Code of Civil Procedure has no application to a case remanded under s. 562 of the Code SITA RAM *v* NAUNI DULAIYA

[I. L. R., 21 All., 230

8. ——— *Civil Procedure Code, 1859, s 6—Transfer of part-heard case to be*

must take place on the institution of the suit RAM NATH *v.* GOWHUR . . . 2 N. W., 230

DUMREE SAHOO *v* JUGDHAREE . 13 W. R., 398

ABDOOL HYE *v* MACRAE 23 W. R., 1

9 ——— *Civil Procedure Code, 1859, s. 6—Transfer after evidence has been taken.*—*Quære*—Whether a case could be transferred from one Court to another, under s. 6, after the evidence had been taken in the former Court ASMEDH KOONWAR *v* TAYLER. KHORSHED ALI *v.* TAYLER . . . W. R., 1864, 15

10 ——— *Civil Procedure Code, 1859, s 6—Suit brought whilst Court is closed for vacation*—The Court of the Principal Sudder Ameen of Thanna being closed during vacation, a plaint which, under s 6 of the Civil Procedure Code, ought to have been instituted in that Court, was, by the order of the District Judge, referred for trial to the Assistant Judge, entered in

Ameen's Court MOTILAL RAMDAS *v.* JAMNADAS JAVERDAS . . 2 Bom., 42: 2nd Ed., 40

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

11. ——— *Civil Procedure Code, 1859, s. 6—District Court—Power to receive plaint when lowest Court closed.*—Where a plain-

12. ——— *Civil Procedure Code, 1859, ss 5 and 6—Jurisdiction*—*Held* that, though both suits were properly cognizable by the Court at Cawnpore, yet the Sudder Court's order, which it was competent to pass under s 6, Act VIII of 1859, gave jurisdiction to the Principal Sudder Ameen of another district, whose decision was not liable to be set aside for want of jurisdiction, in reference to the provisions of s. 5 of that enactment RAM DUX *v.* GIRDHAREE LALL . 1 Agra, 178

13. ——— *Evidence recorded by one officer and decision given by another.*—A suit for enhancement was filed under Act X of

of a Deputy Collector, who wrote a report recommending the mode in which the suit should be disposed of. It was then disposed of by another Deputy Collector, who was probably acting at the time as Collector *Held* that there was no power to transfer the case, and that the procedure by which the suit was heard by one officer and decided by another was illegal. HURDYAL OOPADHYA *v.* MAHOMED NAEEM 1 N. W., Part II, p. 9: Ed. 1873, 79

14. ——— *Civil Procedure Code, 1859, ss 5 and 6.*—Where a District Court had jurisdiction under s. 5, Act VIII of 1859, to try a suit, and defendant made no application to the

15. ——— *Civil Procedure Code, 1859, s 6– Notification giving jurisdiction as Small Cause Court—Power to transfer pend-*

TRANSFER OF CIVIL CASE—*continued.*

1 GENERAL CASES—*continued.*

1859, the notification not being retrospective in its operation NARAYANA MALYA *v* GOVIND SHETTY [6 Mad., 18

16. ——— *Civil Procedure Code, 1859, s. 13.—Power of Sudder Courts.*—S. 13, Act VIII of 1859, enacted that, where a suit

the property was partly situated, might give authority to proceed But no power was expressly given in the section cited, or elsewhere in the Act, to direct the transfer of a suit brought in a Court subordinate to one Sudder Court to a Court subordinate to another Sudder Court *Quære*—Whether Sudder Courts acting in concurrence had power to make such a transfer SKINNER *alias* NAWAB MIRZA *v.* ORDE [I. L. R, 2 All, 241

17. ——— *Civil Procedure Code, 1859, s. 13—Family domains of the Maharaja of Benares. Held,* following S. A No. 969 of 1877, decided the 14th December 1877, that the provisions of s 13 of Act VIII of 1859 were not applicable in a case in which a portion of the immoveable property was situate within the limits of the family

18. ——— *Civil Procedure Code, 1877, s. 24—Place of suing—Grounds of transfer.*—S 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to

19. ——— *Civil Procedure Code, 1877, s 25—Power of High Court*—The High Court cannot make an order of transfer of a case under s 25 of the Code of Civil Procedure unless the Court from which the transfer is sought to be made has jurisdiction to try it. PEARY LALL MOZOOMDAR *v* KOMAL KISHORE DASSIA [I. L. R., 6 Calc., 30

20. ——— *Civil Procedure Code, 1882, s 25—Jurisdiction*—An order for the transfer of a suit from one Court to another under

TRANSFER OF CIVIL CASE—*continued.*

1 GENERAL CASES—*continued.*

30, entirely approved LEDGARD *v.* BULL [I. L. R., 9 All, 191 L. R., 13 I. A., 134

21. ——— *Civil Procedure Code, 1877, s. 25—Transfer from Court in which a suit has been wrongly instituted.* A suit for the infringement of certain inventions, instead of being instituted in the Court having, by virtue of s 22 of Act XV of 1859, jurisdiction to entertain it, was

BULL . I. L. R., 5 All, 371

But held by the Privy Council (reversing the dec

for convenience of trial. *Held* that such trans-

22. ——— *High Court, Jurisdiction of—District Judge, Jurisdiction of—Appeal Appeal withdrawn from the District Court Civil Procedure Code (Act XIV of 1882), s 25.*—An appeal, the subject matter of which was

Dassia, I L R, 6 Calc, 30, and Ledgard v. Bull, I L R, 9 All., 191 L. R., 13 I. A., 134,

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

referred to. RAM NARAIN JOSHY *v.* PARMESWAR NARAIN MAHTA . . . I. L. R., 25 Calc., 39

23. ———————— *Winding-up Company—Transfer of winding-up from District Court to High Court—Companies Act VI of 1882, s. 219—Civil Procedure Code, ss. 25, 647—Stat. 24 &*

under the Companies Act, and transferring those

been appointed,—*Held* that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceedings in the winding-up of a Company under Act VI of 1882 had, after receiving

matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be

24. ———————— *Civil Procedure*

which had been previously transferred to his Court from a Subordinate Court,—*Held* that the order of retransfer was *ultra vires* and should be discharged. SAKHARAM *v.* GANGARAM I. L. R., 13 Bom., 654

25. ———————— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of execution proceedings—Insolvency proceedings—Opposing creditor's right to apply for transfer of insolvency proceedings.*—The power of transfer given by s 25 of the Code of Civil Procedure extends to

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

26. ———————— *Ganjam and Vi-*

s 15.—An order was made by a single Judge by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made by a single Judge, which, though in form an order dismissing a review petition against the first-mentioned order, was in substance an adjudication upon the question whether the High Court has jurisdiction to

MAHARAJAH OF JEYPORE *v.* PAPAYYAMMA I. L. R., 23 Mad., 329

27. ———————— *Civil Procedure Code, 1882, s. 331—Claim below ordinary pecuniary limit.*—By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s 331, to a subordinate Court for trial SITHALAKSHMI *v.* VYTHILINGA . . . . I. L. R., 8 Mad., 548

28. ———————— *Reasons for*

appeal to the High Court on a preliminary point, and been remanded for a trial on *the merits*, limit the authority of the District Court Judge to bring it upon his own file, or to transfer it to the file of a Court other than that in which it was instituted. The omission of the Judge to assign his reason for transferring the case does not vitiate his proceeding. When a Judge transfers a case to his own file, he is at liberty to amend the issues first laid down, and to raise additional issues, and to go into the whole case, except upon any question upon which there has been

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

a judicial finding. TARUCKNATH MOOKERJEE *v.* GOUREE CHURN MOOKERJEE . 3 W. R., 147

29. ———— Procedure on transfer—*Evidence of witnesses.*—Where a suit which was filed

[I. L. R., [illegible] All., 542

30. ———— *Civil Procedure Code, 1882, s. 25—Court to which suit is transferred not taking fresh evidence.*—Where the trial of a suit was commenced by a Subordinate Judge and then transferred by the District Judge to his own file

31. ———— *Case referred to arbitration—Power of Judge to decide after transfer.*—A case having been withdrawn by the Judge, for trial in his own Court, from the Principal Sudder Ameen's Court, where it had already been referred to arbitration,—*Held* that the Judge was quite competent to decide the case himself, without necessarily being bound also to refer it to arbitration. ABOO MAHOMED *v.* KISHEN MOHUN SURMA

[6 W. R., 290

32. ———— *Suit pending in Court of Subordinate Judge with Small Cause Court powers—Transfer to Munsif's Court—Civil Procedure Code, s. 25—Munsif, Jurisdiction of—Subordinate Judge, Jurisdiction of—Provincial*

not invested with Small Cause Court powers. In

was applicable, it would remain throughout a Small Cause Court suit and be subject to the incidents of such a suit. MANGAL SEN *v.* RUP CHAND

[I. L. R., 13 All., 324

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*concluded.*

33. ———— *Civil Procedure Code (1882), s. 25—"Court of Small Causes"—Meaning of the expression—A Court invested with Small Cause Court powers*—The expression "a

CHANDRA *v.* GANESH . I. L. R., 23 Bom., 382

34. ———— *Transfer of suit by order of High Court—Duty of Court to which*

to try the suit himself, and he is not competent to transfer the suit back to the Court of the Subordinate Judge. FATIMA BIBI *v.* ABDUL MAJID

[I. L. R., 14 All., 531

35. ———— *Civil Procedure*

District Judge. *Farid Ahmad* v. *Dulari Bibi, I. L. R., 6 All., 233,* referred to. MUHAMMAD SAFDAR HUSEN *v.* PURAN CHAND

[I. L. R., 20 All., 395

36 ———— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of suit from the Court of Small Causes at Calcutta to the*

other Court having equal or superior jurisdiction. KADAMBINI BAIJI *v.* MADAN MOHAN PASACK

[3 C. W. N., 247

made to each case for transfer. KISHOREE LALL *v.* LUCHMUN DOSS . 2 N. W., 147

2. LETTERS PATENT, HIGH COURT, CL. 13.

38 ———— Transfer to High Court—*Jurisdiction of High Court, Calcutta—Sessions Court, Allahabad.*—The High Court at Calcutta had no jurisdiction over the Court of the Sessions Judge at Allahabad, such Court not being subject to the

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 13—*continued.*

39. ———— *Ground for transfer—Prejudice to interests of party.*—A suit

GREGORY . . . Bourke, Ex. O. C., 1

40. ———— *Power to transfer—Grounds for transfer—Inconvenience—Expense.*—The 13th section of the Letters Patent (1865) of the High Court at Fort William gives the Court power to order a suit to be transferred for trial only

order the case to be transferred. OJOODERAM KHAN *v.* NOBINMONEY DOSSEE 1 Ind. Jur., N. S., 396

41. ———— *Ground for transfer—Nature of questions for disposal—Conduct of Judge.*—On an application under the Letters Patent, 1865, cl 13, for the removal of a suit,—*Held* that, having regard to the whole circumstances connected with the case from the beginning, the questions to be disposed of, and the conduct of the Judge before whom the proceedings were, it was proper and necessary for the purposes of justice that the suit should be removed. THAKOOR KAPILNAUTH SAHAI DEO *v.* GOVERNMENT . 10 B. L. R., 168

42. ———— *Ground for transfer—Nature of questions for disposal—Local*

the case, the Court not being satisfied by the evidence that such reasons existed. COURJON *v.* COURJON [9 B. L. R., 10

43. ———— *Ground for transfer—Consent of parties—Expense.*—A suit for

witnesses resided in Calcutta, that it would be cheaper

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 13—*continued.*

to try the suit in Calcutta, and that all parties appearing on the motion desired a transfer. PAYN *v.* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 6 Calc., 766: 6 C. L. R., 221

44. ———— *Ground for transfer—Difficult questions of English law in case.*—The Court will order a suit to be removed from the

45. ———— *Ground for transfer—Questions of English law—Parties—*

to be transferred for trial to the High Court, original jurisdiction. DOUCETT *v.* WISE [1 Ind. Jur., N. S., 227

46. ———— *Ground for transfer—Sale in execution of decree—Order winding up company.*—On 25th October 1870 a petition for the winding up of the *B T E* Company of Assam was presented to the Court of Chancery in England by one of the shareholders of the Company, and a provisional liquidator was appointed On 5th November, at an extraordinary meeting of the Company, it was resolved that the Company should be

immoveable properties in Assam belonging to the Company were attached in execution of decrees in

confirming the sales. ... High Court for the removal of the suits from Assam to the High Court, to be tried in its extraordinary

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 13 —*continued.*

original civil jurisdiction, on the ground that no

was not a proper case for the exercise of the power which the High Court possesses under cl. 13 of the Letters Patent. IN THE MATTER OF DECREE-SUITS IN THE COURT OF MUNSIF OF DEBROGHUR [7 B. L. R., 305

47. ——————— *Law governing case.*—Where a suit was originally instituted in the Hooghly Court, and *H S*, who was a defendant, and

The law, therefore, to be administered by the High

48 ——————— *Letters Patent, High Court, 1865, cl 13—Grounds for transfer—Practice.*—In a suit for immoveable property instituted in the Dinagepur Court the defendant applied for its transfer to the High Court under cl. 13 of the

residents of Calcutta or its neighbourhood. *Held*, under the circumstances, that the case was a proper

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL 13 —*concluded.*

one to be transferred to the High Court HARENDRA LALL ROY *v* SARVAMANGALA DABEE [I. L. R., 24 Calc., 183

SURVOMONGOLA DEBI *v.* HARENDRA LALL ROY [1 C. W N., 109

49. ———

[4 W. R., Mis., 4

3. GROUND FOR TRANSFER.

50. ——— Expense, convenience, on other good reason—*Civil Procedure Code (Act XIV of 1882), s. 23—Practice*—S 23 of Act XIV of 1882 is only intended to provide for those cases where, on the ground of expense or convenience, or some other good reason, the Court thinks that the place of trial ought to be changed. Parties desirous

be changed. KHATIJA BIBI *v.* TARUK CHUNDER DUTT I. L. R., 9 Calc., 980: 13 C. L. R., 182

51. ——— Portion of property in another jurisdiction—*Civil Procedure Code,*

be received by the Munsif and transmitted to the High Court through the District Court PURRUNJOTE *v* DEON PANDAY . 2 C. L. R., 352

52 ——— Suit for partition of pro-

TRANSFER OF CRIMINAL CASE —*continued.*

1. GENERAL CASES—*continued.*

10. ———————— *High Courts' Criminal Procedure Act, 1875, s. 147—Transfer of case before Magistrate—Power to issue mandamus.* —A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held* also it was not a case which the Court could transfer under s. 147 of the High Courts' Criminal Procedure Act. EMPRESS *v.* GASPER

[I. L. R., 2 Calc., 278

11. ———————— *High Courts' Criminal Procedure Act, 1875, s. 147—Case transferred to High Court—Refund of fine on quashing conviction—Notes of evidence taken by Magistrate.* —The High Court had no power, under s. 147, Act X of 1875, to order a fine to be refunded on quashing a conviction. The Court in this instance decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial. QUEEN *v.* JEEBUN BUX

[I. L. R., 1 Calc., 354

12. ———————— *High Courts' Criminal Procedure Act, 1875, s. 147—Costs—Police Magistrates—Notes of evidence.*—In a case transferred to the High Court under s. 147, Act X of 1875, the Court had no power to give costs. *Semble* —The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all Criminal Courts subject to the Act. IN THE MATTER OF LOTUS. IN THE MATTER OF BENGAL ACT VI OF 1866

[15 B. L. R., Ap., 14

13. ———————— Power of District Magistrate—*Power to call for case—Procedure when, having called for it, he finds it out of his jurisdiction.* The Magistrate of the district has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate, having in the exercise of his authority withdrawn any case, finds that it did not come within the jurisdiction of his Magistracy, he would not merely be competent, but bound to refuse to proceed further with the case. VILAYTEE KHAN *v.* MEHER ALI

[24 W. R., Cr., 4

14. ———————— *Held* that, although the Magistrate of a district is competent to order the removal of any particular case from the file of a subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence, and which are not pending before any of his subordinates. GOVERNMENT *v.* GIRDHAREE LALL

[1 Agra, Cr., 21

15. ———————— *Criminal Procedure Code (1882), ss. 595 and 192—Transfer of criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.*—When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s. 192 of the Code of Criminal Procedure, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it. QUEEN-EMPRESS *v.* MATA PRASAD

[I. L. R., 19 All., 249

16. ———————— Application for transfer—*Criminal Procedure Code, 1872, s. 64—Power of Judge acting on English committee.*—An application for the transfer of a case under s. 64 of the Criminal Procedure Code should be made, not by [illegible] High Court [illegible]

17. ———————— Notice of transfer—*Subordinate Magistrates—Criminal Procedure Code (Act X of 1872), s. 48—Notice to the parties before the transfer is made.*—Before a Magistrate of a District can transfer a case from a Court subordinate to him to any other subordinate Court, notice of such intended transfer should be served upon the parties, so as to enable any or either of the parties to come forward and show cause why such transfer should not be made. IN THE MATTER OF THE PETITION OF TRACOTTA SREEDAR. TRAKOTTA SHEKDAR *v.* AMEER MAJEE I. L. R., 8 Calc., 393 : 10 C. L. R., 289

18. ———————— *Criminal Procedure Code (Act X of 1882), s. 528—Notice to accused.*—An order under s. 528 of the Criminal Procedure Code (Act X of 1882), transferring a case for inquiry or trial from one Magistrate to another, ought not to be made without notice to the accused. QUEEN-EMPRESS *v.* SADASHIV NARAYAN JOSHI

[I. L. R., 22 Bom., 549

19. ———————— Transfer of partly-heard case—*Hearing of evidence.*—Where a case which

TRANSFER OF CRIMINAL CASE —*continued.*

1. GENERAL CASES—*concluded.*

has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. KOPIL NATH SAHI *v.* KONEBRAM . . . 14 W. R., Cr., 3

QUEEN *v.* KULLIAN SINGH . 2 N. W., 468

[14 W. R., Cr., 3

2. LETTERS PATENT, HIGH COURT, CL. 29.

20. ——— Transfer to High Court— *Power to transfer—Criminal Procedure Code, 1872, s. 64.*—S. 29 of the Letters Patent of 1865 empowers the High Court to transfer for trial before itself an appeal to a Court of Session from the

of criminal jurisdiction to another. SITAPATHI NAYUDU *v.* QUEEN . . I. L. R., 6 Mad., 32

21. ——— Power to transfer— *"Competency" to investigate case.*—The construction of cl. 29 of the Letters Patent, 1865, is that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the mofussil "Competent to investigate it" does not include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment. QUEEN *v.* NABADWIP GOSWAMI

[1 B. L. R., O. Cr., 15 : 15 W. R., Cr., 71 note

22. ——— Power to transfer— *Power of single Judge on original side of High Court.*—On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was

points of law were likely to arise at the trial, but these allegations were denied by the affidavits filed in opposition to the application,—*Held* (MACPHERSON, *J.*, doubting) the High Court had power under

TRANSFER OF CRIMINAL CASE —*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 29 —*concluded.*

cl. 29 of the Letters Patent to transfer the case for trial by itself. The Court however ...

on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the mofussil to the High Court in the exercise of its extraordinary original criminal jurisdiction. QUEEN *v.* AMEER KHAN

[7 B. L. R., 240 : 15 W. R., Cr., 69

3. GROUND FOR TRANSFER.

23. ——— Nature of grounds for transfer— *Transfer from one Magistrate to another.*—The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate. IN THE MATTER OF THE PETITION OF SHANKAR ABAJI HOSHING. REG. *v.* SHANKAR ABAJI HOSHING . . . . 6 Bom., Cr., 69

24. ——— Probability of unfair trial —*Transfer from one Magistrate to another.*—It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one magisterial officer to another. QUEEN *v.* KISTO CHUNDER GHOSE

[2 W. R., Cr., 58

25. ———

OF THE LEGAL REMEMBRANCER. EMPRESS *v.* NOBO GOPAL BOSE . . . I. L. R., 6 Calc., 491

26. ——— Prosecution initiated by Magistrate— *Conviction before same Magistrate —Transfer of appeal from Magistrate to Sessions Judge.*—Where the Magistrate of the district had procured the initiation of a number of prosecutions

... 24 W. R., Cr., 58

27. ——— Judge forming premature opinion— *Convenience—Relieving judicial officer of case he wishes not to try.*—The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made

TRANSFER OF CRIMINAL CASE —*continued*

3. GROUND FOR TRANSFER—*continued.*

without risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. IN THE MATTER OF THE PETITION OF ARUNACHALLA REDDI . . . . . 5 Mad., 212

28. ——— *Criminal Procedure Code (Act V of 1898), s. 526—Expression of opinion by Magistrate in counter-case on evidence adduced.*—Where the complaint forming the subject of trial in a case before a Magistrate related to facts forming the substance of the defence in another case already tried by the same Magistrate,—*Held* that the Magistrate having had to express his opinion on the evidence, which formed the evidence for the defence in that case, it was desirable to have the complaint tried by some other Magistrate. CHANDRAMANI SARMA *v.* KUNJA REDDI . 4 C. W. N., 824

29. ——— **Reasonable apprehension in the mind of the accused**—*Criminal Procedure Code (1882), s. 526—Real bias—Incidents calculated to create apprehension of bias.*—In dealing with applications for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial DUPEYRON *v.* DRIVER . I. L. R., 23 Calc., 495

FARZAND ALI *v.* HANUMAN PRASAD
[I. L. R., 19 All., 64

30. ——— **Probability of unfair trial**—*Complexity of case—Transfer from one Magistrate to another—Local investigation—Magistrate trying case, Competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness.*—Where an Assistant Magistrate with second class powers was directed by the District Magistrate to take up a case of some complexity, arising out of disputed boundaries to land, in which the accused were charged with rioting, trespass, mischief, and theft, and where, in the course of such investigation, he held a local inquiry extending over five days, during which he made a number of notes and appeared to have made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, and during such investigation it appeared that he acquired a large amount of information with reference to the occurrence on which he had to arrive at a judicial determination, but which, by reason of the way it was acquired, he could not properly or legally consider in arriving

TRANSFER OF CRIMINAL CASE —*continued.*

3. GROUND FOR TRANSFER—*continued.*

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for disposal [illegible]
MIAH . . . [illegible]

31. ——— **Fairness and impartiality of the jury**—*Criminal Procedure Code (1882),* [illegible]

[illegible] fairness and impartiality of the particular [illegible] try the case. An order for transfer in such cases is expedient for the ends of justice under s. 526, cl. (e), of the Criminal Procedure Code. The importance of securing the confidence of parties in the [illegible]

[illegible] constitute a part and an important part of the [illegible] where [illegible]

[I. L. R., 25 Calc., [illegible]

IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCER. QUEEN-EMPRESS *v.* BHAIRAB CHUNDER CHAKERBUTTY . 2 C. W. N., 65

32. ——— Magistrate having bias [illegible]

[illegible]

33 ——— **Illegal procedure by Magistrate**—*Magistrate antagonistic to accused*

TRANSFER OF CRIMINAL CASE —*continued.*

3. GROUND FOR TRANSFER—*continued.*

—*Power of High Court.*—Where the procedure in the case of a person charged with an offence was

34 ——— **Judicial officers interested in case**—*Criminal Procedure Code, 1872, s. 64—Road cess case—Transfer of appeal for trial.*—Where it appeared that the only officers in the district of P otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the district were, by reason of their connection with

BANERJEE . . . . . 6 C. L. R., 279

35. ——— **Magistrate expressing opinion unfavourable to accused**—*Criminal Procedure Code, 1861, s. 36—Transfer by Magistrate.*—Although s. 36 of the Code of Criminal Procedure did not require a Magistrate to state his reasons for trai
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prosecution, and had expressed an opinion unfavourable to the prosecution. QUEEN *v.* NOBOCOOMAR BANERJEE . . . 14 W. R., Cr., 12

36 ——— **Manipulation of order-sheet by Magistrate**—*Criminal Procedure Code (Act X of 1882), s. 526—Inquiry preliminary to commitment—Bias—Attaching document to record after receipt of order of High Court, staying proceeding—Transfer, Grounds of.*—It appeared that during the course of an inquiry preliminary to commitment some entries in the order-sheet were not

TRANSFER OF CRIMINAL CASE —*concluded.*

3. GROUND FOR TRANSFER—*concluded.*

transferred to another Magistrate. ANANT RAM *v.* MANSOOR ROY . . . . 2 C. W. N., 639

37. ——— **Jurisdiction**—*Place of commission of offence—Transfer of preliminary investigation—Criminal Procedure Code, 1872, ss. 64 and*

Calcutta, the place where the offence charged was, if not wholly, at all events partly, committed. QUEEN *v.* MACDONALD . . 22 W. R., Cr., 6

38 ——— **View of the scene of the occurrence by a Magistrate trying a crimi-**

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other Magistrate. IN THE MATTER OF THE PETITION OF LALJI . . . I. L. R., 19 All., 302

TRANSFER OF PROPERTY.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 2 Bom., 547
I. L. R., 5 Bom., 554

——— **while transferor is out of possession.**

See VENDOR AND PURCHASER—BILLS OF SALE . . 2 B. L. R., P. C., 111

1. ——— **Ownership of cotton in press**—*Sale—Exchange—Trade usage, Proof of—Contract Act, ss. 49, 77, 92, 151—Transfer of Property Act, s. 118—Delivery of cotton to cotton press*—According to mercantile usage in the cotton trade in Tuticorin, where a dealer delivers cotton to the owner of a cotton press, not in pursuance of any special contract, the property in the cotton vests in the owner of the cotton press, who is bound to give the merchant in exchange cotton of like quantity and quality The transaction is not a sale, but an agreement for exchange. Where therefore cotton thus delivered was accidentally destroyed by fire,—*Held* that the loss fell on the owner of the press VOLKART BROTHERS *v.* VETTIVELU NADAN
[I. L. R., 11 Mad., 459

2 ——— **Erection of building for school on land**—*Gift of building for a school—Position of managers of school—Suit by managers for trover and trespass*—Where a party who, partly with his own funds and partly with R100 subscribed

TRANSFER OF PROPERTY—*continued.*

by the village, erected a building for a school, never gave the property to the school, and never even acquiesced in the managers of the school entering upon it,—*Held* that the managers entered upon it as trespassers, and that, although the proprietor acquiesced in their having taken possession, he did not thereby convey any property in the school to the subscribers, and was not bound to repay that portion of the money which he expended himself in building the house or to do more than return that portion of the funds which were subscribed by the village. SREEHURRY ROY *v.* HILLS . . . . . 7 W. R., 476

S. C. on reference on original trial [6 W. R., Civ. Ref., 31

3. ——— Sale while vendor is out of possession—*Right of purchaser to sue for possession.*—It is the practice of the Courts in this country to give effect to sales of property made by persons out of possession and to recognize the title of the purchaser to maintain a suit. RUNNOO PANDEY *v.* BUKSH ALI . . . . . 3 N. W., 2

KUMUROODDEEN *v.* BHADOO . 11 W. R., 134

AULOCK MONEE DOSSIA *v.* AULOCK MONEE DEBIA [25 W. R., 48

PRANKRISHNA DEY *v.* BISWAMBHAR SEIN [2 B. L. R., A. C., 207 11 W. R. 81

4. ——— *Right of purchaser to sue for possession—Want of consideration.*—Alleged purchasers whose vendors were not in possession, and who have paid nothing for what is said to have been sold to them, are not competent to maintain a suit for possession of the property in dispute. BISHONATH DEY ROY *v.* CHUNDER MOHUN DUTT BISWAS . . . . 23 W. R., 165

See TARA SOONDOREE CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH [13 B. L. R., 495 : 20 W. R., 446

5. ——— *Right of purchaser to sue for possession.*—The current of High Court decisions on the question whether a purchaser from a party not in possession is competent to maintain a suit to recover the land is in favour of the right to bring a suit. BISSESSUR DOSS *v.* JOYKISHORE DOSS . . . . 25 W. R., 223

6. ——— *Wrongful dispossession of vendor—Right of vendee to sue for possession.*—Where a conveyance of property was made by a person who had been in possession and enjoyment for years before she was wrongfully ousted, the conveyance was held to give a right to sue for immediate possession. BIKAN SINGH *v.* PARBUTTY KOOER [22 W. R., 99

NITTYANUND GOSSAIN *v.* SHAMA CHURN CHATTERJEE . . . . . 23 W. R., 163

See GUNGA HURRY NUNDEE *v.* RAGHUBRAM NUNDEE . 14 B. L. R., 307 : 23 W. R., 131

7. ——— *Right of assignee to sue for possession—Third parties—Requisite proof.*—An assignee of property, of which the assignor was not in possession when the assignment was [illegible] hands of the assignor. BOODHUN SINGH *v.* LUTTEEFUN . . . . . 22 W. R., 535

8. ——— *Right of specific performance after purchase of right to sue.*—Where a purchaser of a right to sue for possession brings a suit for specific performance and it is not shown that he has left undone anything necessary to entitle him to what he claims, it must be taken in special appeal that the plaintiff is entitled to insist on specific performance of his contract with his vendor. LALLA SAHIL CHAND *v.* GOODUR KHAN [22 W. R., 157

9. ——— *Suit by assignee for possession—Effect of bill of sale.*—The assignees, R, K, and G, of certain property brought against the assignor, L and others, a suit to obtain possession of a portion of assigned property of which he, L, never had possession, and to obtain a declaration of right of ownership to the other portion already in the possession of one or more of themselves. *Held* that as L, at the time when the assignments were made, was not in either actual or constructive possession, he was unable thereby to pass the property, and that the bill of sale was only evidence of a contract to be performed in future upon the happening of a contingency. RAM KHELAWUN SINGH *v.* OUDH KOOER . . . . . 21 W. R., 101

And *see* BOODHUN *v.* BOODHUN SINGH [21 W. R., 156

10. ——— *Suit by assignee for possession—Validity of transfer.*—The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one Mutyawa. The defendants contended that Mutyawa had never been in possession of the land. The lower Appellate Court held that, as [illegible] been in possession at the time the kararnama was [illegible] CHAND *v.* MADAPA SOMANA [I. L. R., 9 Bom., 324

11. ——— *Sale in execution of decree—Assignment by purchaser who has not obtained possession.*—Upon a sale in execution of a decree the property in the thing sold passes to the purchaser; and there is nothing in either the Hindu or the English law which debars a third person from taking an assignment of such property from the auction-purchaser, albeit it has not been reduced into possession by him. GOVIND RAGUNATH *v.* GAVIND JAGOJI . I. L. R., 1 Bom., 500

TRANSFER OF PROPERTY—*concluded*.

13. ——— Lease granted while lessor is out of possession.—A valid lease cannot be granted by a person not in possession of the lands leased. TIERY v. KRISTO MOHUN BOSE. HOVENDEN v. AKBAR ALI . . L. R., 1 I. A., 76

14. ——— *Rights of lessee —Suit for possession.*—A transfer of property of which the transferor is not at the time of the transfer in possession is not *ipso facto* void. Where a patnidar, while out of possession of the patni estate, [illegible]

consideration for the dar-patni, and that the dar-patni pottah was not evidence of a contract to be performed in future on the happening of a certain contingency, or that if it were so, that the plaintiff had done all he was bound to do to entitle him to specific performance of the agreement by the patnidar. LOKENATH GHOSE v. JUGOBUNDHOO ROY [I. L. R., 1 Calc., 297

TRANSFER OF PROPERTY ACT (IV OF 1882).

See LEASE—CONSTRUCTION.
[I. L. R., 7 Bom., 256
I. L. R., 17 Calc., 826

See LIMITATION ACT, 1877, ART. 132.
[I. L. R., 10 Mad., 509
I. L. R., 14 Calc., 730

See LIMITATION ACT, 1877, ART. 135.
[I. L. R., 16 Calc., 693
L. R., 16 I. A., 85

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE
[I. L. R., 8 All., 388
I. L. R., 1 Calc., 582

——— Application of Act—*Mortgages executed before Act came into force—"Property," Meaning of—General Clauses Act (I of 1868), s. 2, cls. 5, 6.—Held* by EDGE, C.J., STRAIGHT, TYRRELL, and KNOX, JJ.—The term "property" as used in Ch. IV of Act IV of 1882, means an actual physical object, and does not include mere rights relating to physical objects. *Held* by the Full Bench. The Transfer of Property Act (IV of 1882), so far as the question of reliefs and procedure is concerned, applies to mortgages executed before the coming into force of the Act. *Ganga Sahai* v. *Kishen Sahai, I. L. R., 6 All., 262*, and *Bhobo Sundari Debi* v. *Rakhal Chunder Bose, I. L. R., 12 Calc., 583*, referred to. *Per* MAHMOOD, J., *contra.*—The term

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*.

"property" throughout Act IV of 1882 is used in its most generic sense, and will include the right known as an "equity of redemption." MATA DIN KASODHAN v. KAZIM HUSAIN [I. L. R., 13 All., 432

1. ——— s. 2—*Mortgage executed before Act came into force—Assignment of after Act in operation.*—The provisions of the Transfer of Property Act apply to the assignment of a mortgage made after that Act came into force, although the mortgage may have been made before the commencement of that Act. LALA JUGDEO SUHAI v. BIRJ BEHARI LAL . . I. L. R., 12 Calc., 505

2. ——— *Mortgage—Foreclosure—Reg. XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement.*—The years of grace allowed by s. 8, Regulation XVII of 1806, is a matter of procedure which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely. The right so acquired

stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession in pursuance thereof after the passing of the Transfer of Property Act. *Held* that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force. BAIJ NATH PERSHAD NARAIN SINGH v. MOHESHWARI PERSHAD NARAIN SINGH I. L. R., 14 Calc., 451

3. ——— *Mortgage—Foreclosure—Suit for conditional sale—Reg. XVII of 1806—Procedure.*—A suit was brought on the 24th [illegible]

gaged properties. The mortgage was dated the 6th April 1881, and the mortgage money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss. 7 and 8 of Regulation XVII of 1806. The year of grace expired on the 10th July 1882. It was contended by the mortgagor that, as the Transfer of Property Act

Transfer of Property Act could not be applied to the case. Although the year of grace had not expired when that Act came into force, and the full and complete right of the mortgagee had not accrued, he had acquired the right to bring a suit under the provisions of Regulation XVII of 1806 at the expiration of the year of grace, and the mortgagor was under a liability to

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

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4. ———— *Mortgage—Suit for foreclosure—Conditional sale—Reg. XVII of 1806—General Clauses Consolidation Act (I of 1868), s. 6—"Proceedings."*—In a suit for foreclosure under a deed of conditional sale, where the due date of the deed expired and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act,—*Held*, following *Mohabir Pershad Narain Singh v. Gungadhur Pershad Narain Singh, I L. R., 14 Calc., 599*, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were saved by s 6 of the General Clauses Consolidation Act (I of 1868). The "proceedings" referred to in that section are

5 ———— and ss. 67, 86—*Suit for foreclosure of mortgage—Beng. Reg. XVII of 1806, ss. 7, 8—Procedure—Act I of 1868 (General Clauses Act), s 6*—A mortgagee by conditional sale under an instrument executed while Regulation XVII of 1806 was in force, and before the Transfer of Property Act, 1882, which repealed that Regulation, came into force, sued, after the repeal of that Regulation, for foreclosure of the mortgage, not having proceeded in accordance with the provisions of s. 8 of that Regulation *Held* (STUART, C.J.,

[I. L. R., 6 All, 262

6. ———— and ss. 67 and 99—*Attachment of property mortgaged prior to 1882*—In 1884 a mortgagee obtained a decree for arrears of interest due under a mortgage deed of 1879, and in execution of the decree attached and applied for the sale of the land mortgaged. *Held* that by reason of s. 99 of the Transfer of Property Act, 1882, the land could not be sold otherwise than by a suit instituted under s 67 of the said Act. KAVERI v. ANANTHAYYA . I. L. R., 10 Mad., 129

7. ———— and ss. 67, 99—*Mortgage decree—Execution of decree.*—A decree-holder, who had obtained a decree in the year 1880 against his judgment-debtor, declaring his title in certain mortgaged properties and authorizing a sale, sought, after several previous applications keeping the decree alive, to execute his decree again on the 15th April 1885. The judgment-debtor objected, on the ground that no suit had been instituted or decree obtained under s. 67 of the Transfer of Property Act as directed by s. 99 *Held* that s 99 of that Act was not intended to apply to decrees already obtained declaring a lien and authorizing a sale, but even assuming that it was so intended, s 2 of the Act saved the right of the decree-holder to obtain a sale of the mortgaged properties. *Ganga Sahai v. Kishen Sahai, I. L. R., 6 All., 262*, distinguished. DINENDRA NATH SANNYAL v. CHANDRA KISHORE MUNSHI . . . I. L. R., 12 Calc., 436

8. ———— and s 86—*Mortgage—Conditional sale—Suit for possession on foreclosure—Beng. Reg. XVII of 1806, ss. 7, 8*—The procedure laid down in the Transfer of Property

the Transfer of Property Act came into force, and after the expiry of the year of grace, the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings, and the necessary notice had not been served upon him,—*Held* that it was competent to the Court to apply the procedure . . . Act and grant

SINGH . . . I. L. R., 11 Calc., 00-

9. ———— *Mortgage—Foreclosure, Suit for—Mortgage by conditional sale—Beng. Reg. XVII of 1806—Procedure—Statute, Construction of*—Where a suit is brought, after the date of the Transfer of Property Act, for the foreclosure of a mortgage dated previous to the Act, the procedure to be followed is that given by the Transfer

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affected by a change of procedure. . . . "rights and liabilities" of a mortgagor and mortgagee, and the "relief" in respect of such rights and liabilities, are

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

the same under Act IV of 1882 as they were before. A different procedure for enforcing such rights and obtaining such relief has, however, been adopted by the Transfer of Property Act. BHOBO SUNDARI DEBI *v.* RAKAL CHUNDER BOSE [I. L. R., 12 Calc., 583

———— s. 3.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING [I. L. R., 21 Calc., 116

See REGISTRATION ACT, 1877, s 50. [I. L. R., 16 All., 478

———— *Meaning of "notice"*—The definition of the word "notice" in s. 3 of the Transfer of Property Act (IV of 1882) correctly codifies the law as to notice which existed prior to the passing of the Act. CHURAMAN *v.* BALLI [I. L. R., 9 All., 591

———— s. 4

See REGISTRATION ACT, 1877, s 17, cl. (*d*) . I. L. R., 17 Mad., 275

———— s 6

See ONUS OF PROOF—HINDU LAW—ALIENATION . I. L. R., 17 All., 125

See RIGHT OF SUIT—MESNE PROFITS [2 C. W. N., 43

1. ———— *Property—Actionable claim—Transferable claim—Civil Procedure Code, s 266—Execution of decree—Attachment.*—Under the Transfer of Property Act, "property" includes an actionable claim. RUDRA PERKASH MISSER *v.* KRISHNA MOHUN GHATUCK [I. L. R., 14 Calc., 241

2. ———— *Reversionary right*—

3. ———— *Mesne profits, right to recover, Transferability of—Actionable claim—Transfer of Property Act, s. 130.*—A right to recover mesne profits which are in the nature of damages is not transferable. DURGA CHUNDRA ROY *v.* KOILASH CHUNDER ROY . 2 C. W. N., 43

———— s 7

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS [I. L. R., 23 Bom., 146

———— s 8

See REGISTRATION ACT, s 18 [I. L. R., 18 Mad., 454

See VENDOR AND PURCHASER — PURCHASERS, RIGHTS OF [I. L. R., 22 Bom., 610

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1. ———— s. 10—*Married Woman's Property Act (III of 1874), s 8—Restraint on anticipation.*—S. 10 of the Transfer of Property Act merely excepts from the general rule laid down in *s 8 of the Married Woman's Property Act,* III of 1874, the particular case of a married woman, and does not give to a restraint upon anticipation

2. ———— and s. 2—*Condition against alienation—Inheritance—Deed of compromise—Bengal Civil Courts Act, VI of 1871, s 24.*—In a suit for possession of certain shares in certain villages a compromise was effected between the plaintiffs and *B*, the defendant. The terms of the compromise were embodied in a deed, the terms of which were (*inter alia*) as follows: "The said *B* will hold possession as a proprietor, generation by generation, without the power of transferring in any shape. *The following shares recorded in B's name shall not* be transferred or sold in auction in payment of any debt payable by the said *B*, and in the event of their being transferred or sold, such transfer will be invalid, and the plaintiffs will then be entitled to set aside that transfer, and to obtain possession" *B* obtained possession of the shares allotted to him by the compromise Subsequently, certain creditors of *B* attached the shares referred to in the deed in execution of a decree obtained against the heirs of *B* for money lent to *B* on a bond, which he had executed while in possession of the shares, and in which he made a simple mortgage of them The representatives of the plaintiffs in the suit in which the compromise was made objected to the attachment. *Held* by OLDFIELD, *J.*, that the deed of compromise passed an absolute estate to *B* and his heirs to which the law annexed a power of transfer, and that, in reference to s 10 of the Transfer of Property Act, the stipulation against alienation on *B*'s part, or

heritance, to be governed by s 24 of the Bengal Civil Courts Act, that it was for those objecting to the attachment to show that, under the Hindu law the rights of *B* in the property ceased to exist at his death, or that his estate devolved upon them free of his debts, that the Hindu law being silent on this subject, the principles of justice, equity, and good conscience must be applied, to which, so far as transfer was concerned, effect was given by s. 10 of the Transfer of Property Act; that the restriction imposed by the deed of compromise upon *B*'s powers of alienating the absolute estate which it

execution of decrees for his debts. *Tagore Case,*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

B. L. R., 377, referred to BHAIRO *v* PARMESHRI DAYAL . . . . I. L. R., 7 All., 516

3 ——————— and s. 12—*Transfers by act of parties—Assignments by operation of law.*—Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY . . . . I. L. R., 12 All., 192

——— ss. 10, 11.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS . I. L. R., 8 All., 452

——— s. 14.

See PERPETUITIES, RULE AGAINST.
[I. L. R., 20 Bom., 511

——— s. 35.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 22 Mad., 289

——— s 39

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW
[I. L. R , 23 Bom., 342
I. L. R., 27 Calc., 194
I. L. R., 22 All., 326

——— s. 41.

See N.-W. P. RENT ACT, s 7.
[I. L. R., 8 All., 409

——— – *Ostensible ownership—Purchase bonâ fide for value from ostensible owner—Laches—Decision based upon ground not specifically pleaded.*—Where a Court sees that the rights of one of two innocent parties must be sacrificed, it is entitled to consider whether anything in the conduct of the party who comes into Court and seeks relief has debarred him from asserting his right. Where the plaintiff had for many years left another person in possession of a house, and the defendant had become at auction sale the *bonâ fide* purchaser for value of the house under a decree against such person as ostensible owner, the Court found that s. 41 of the Transfer of Property Act applied, and dismissed the plaintiff's suit. The Court is not precluded from basing its decision upon a ground not specifically pleaded by either of the parties. THAKURI *v.* KUNDAN . . . . I. L. R., 17 All., 280

——— s. 43.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[I. L. R., 18 Mad., 492

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.
[I. L R., 14 Mad., 459

——— s. 44.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER . . I. L R., 13 Mad., 275

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 45.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.
[4 C. W. N., 465

——— s. 48.

See N.-W. P. RENT ACT, s. 7.
[I. L. R., 8 All., 409

——— s. 51.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R., 8 All., 502

——— s. 52.

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 19 Mad., 257

See CASES UNDER LIS PENDENS.

——— – *Registered and unregistered documents—Transfer of property "pendente lite"—Act III of 1877 (Registration Act), s. 50.*—B held a decree for the sale of property which had [illegible]

could apply, and that N's purchase was, by s 52 of the Transfer of Property Act, subject to the decree passed in B's favour. BHAGWAN DAS *v.* NATHU SINGH . . . . I. L. R., 6 All., 444

——— s. 53.

See LIS PENDENS.
[I. L. R., 13 All., 371

See REGISTRATION ACT, 1877, s. 50.
[I. L. R., 8 All., 540

1. ——————— *Stats. 13 Eliz., c. 5, and 27 Eliz., c. 4—Voluntary transfers as against creditors or subsequent transferees for consideration—Notice—Registration—Duty of mortgagee in searching for prior incumbrances—Post-nuptial settlement with power of appointment to wife—Deed of appointment in favour of children—* [illegible]

to the defendant E (the brother of J) and one [illegible] and after her death [illegible] and subse[illegible] power given [illegible] entures and invested the proceeds in house property in Calcutta, such house and premises thereafter representing the trust property and being held by the trustees on the trusts of the settlement. On the 17th December 1878 E retired from the trust and made over his interest to the remaining trustee G, and on the same day J executed a deed of appointment in favour of her children representing to her solicitor that she did so to protect the property from her husband.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

[illegible]

ing in *J*'s custody and rot being made over to *G*. In 1884 *G* retired from the trust, and *E* became sole trustee in his place In March 1884 money was [illegible]

of another mortgage of the property in 1888, was any mention made of the deed of appointment, and there was nothing on the record of the case to show that the husband was ever in needy circumstances, or pressed his wife for money, or that he died leaving no property In 1890 *E* and *J* mortgaged the house and premises to the plaintiffs, the mortgage deed (which was duly registered) reciting the settlement of 1870, and that "*J* has not made any irrevocable appointment of the said trust premises under the power of appointment given to her in the settlement," [illegible]

persons who must have known of the exercise of the power of appointment, and who had given a covenant that no such exercise had been made, and because they then found that *G*, the former trustee, had taken a similar security himself in 1884 and must have been satisfied that no such blot existed on the title. They had, moreover, a letter from *G*'s solicitors saying that they had searched the register up to 1884. *J* first set up the deed of appointment as a defence in the present suit, which was brought on the mortgages against *E* and *J* and their children, and in which the plaintiffs sought to recover the amount advanced with interest, and prayed that the deed [illegible]

natural love and affection for her children, and that the plaintiffs had notice of it On the facts the lower Court (SALE, *J*) found that she had full and complete knowledge of the contents of the mortgage-deeds and was bound by them, and that there was gross fraud towards the plaintiffs on the part of *E* [illegible]

within the meaning of the Stat. 27 Eliz., c. 4, and void as against the plaintiffs as subsequent transferees for valuable consideration; the legal presumption of fraud which the Court was entitled to make on the cases decided on that statute rendering the question of notice or no notice immaterial. *Judah v. Abdool Kureem, 22 W. R., 60; Doe d. Otley v. Manning, 9 East, 59; Doe d. Newman v. Rushan, 17 Q. B., 724*, and *Godfrey v. Poole, L. R., 13 Ap. Cas., 497.* referred to. S 53 of the Transfer of Property Act has not altered the law in that respect The deed of appointment came within the definition of "transfer of property" given in that Act, there being nothing in the Act to suggest that it was intended to confine its operation to transfers by contract The words of s 53, "may be presumed to [illegible]

subsequent transferee had notice from the presumption of fraud,—*Held* on the facts that the plaintiffs had no notice of the deed of appointment The doctrine of notice, if applied, must be applied in accordance with, and subject to, the definition of notice given in the Act itself There was no actual notice, and there was not such an "abstention from inquiry or search" on the part of the plaintiffs as to fix them with constructive notice The words "wilful abstention from inquiry and search" mean such abstention as would show want of *bonâ fides* on the part of the plaintiffs in respect of this particular transaction. *Agra Bank v Barry, L R 7 E. & I, 135,* referred to *Held* also that the doctrine of registration amounting to notice, as laid down in the case of *Lakshmandas Sarupchand v. Dasrat, I. L.* [illegible]

presumption of fraud from arising If the true meaning of that section be that the Court is to presume fraud only in accordance with the facts of each particular case, the facts of the present case were amply sufficient to raise the presumption as regards the deed of appointment. That deed therefore was fraudulent as against the plaintiffs, and they were entitled to a declaration that it was [illegible] *Held* on appeal [illegible] O'KINEALY, [illegible] ay in which [illegible] ointment was carried out, and the secrecy given to it, the result of which was to enable *E* and *J* to raise money on the trust property by inducing persons to believe that the whole title lay in themselves alone, and on the other facts in the case, apart from the presumption which might be made under s 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration, *viz*, that it may be presumed to have been made to defraud or defeat creditors the decree of the Court below was correct. JOSHUA *v.* ALLIANCE BANK OF SIMLA . . I. L. R., 22 Calc., 185

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

2. ———— *Rights of a transferee in good faith and for consideration—Good faith, Meaning of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention*.—Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge of

3. ———— *Transfer in fraud of creditors—Good faith.*—When it is said that a deed is not executed in good faith, what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible grantor should retain the benefit to himself RAMASAMIA PILLAI *v.* ADINARAYANA PILLAI

[I. L. R., 20 Mad., 465

4. ———— *Debtor and creditor—Intent to delay and defeat creditors—Stat 13 Eliz, c 5*—A mere preference by a debtor of one

defeat or delay the creditors

5. ———— *Assignment in fraud of creditors—Interest taken under will*—*B* died in 1891, leaving a widow (defendant No. 1) and two sons *P* and *D* (defendants Nos 4 and 5). By this will he gave his widow a life-interest in the rents and income of his property subject to the obligation of maintaining, educating and bringing

dants alleged (*inter alia*) that by an assignment dated the 20th February 1890 the widow had assigned and surrendered her life-interest to her son *D*, and that such interest was therefore not available to satisfy the plaintiff's decree against her As to *P*'s interest, the defendants alleged that by a deed of settlement, dated the 9th February 1893, it was validly settled for the benefit of himself and his family, and that therefore he had no interest in him which could be attached under the order of the 2nd July 1895. That even independently of the attach-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

———— s. 54.

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY.
[I. L. R., 16 All., 344

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ.
[I. L. R., 7 All., 482, 626

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 10 All., 20
I. L. R., 27 Calc., 468

See REGISTRATION ACT, 1877, s 16
[I. L. R., 18 Mad., 454

See REGISTRATION ACT, s 48
[I. L. R., 13 Mad., 324
I. L. R., 27 Calc., 468

See CASES UNDER VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 18 Mad, 61

———— *Optional registration.*—*Per* GARTH, *C.J.*—S. 54 of the Transfer of Property Act virtually abolishes optional registration NIBARUN CHUNDER CHUCKERBUTTY *v.* DAYARAM ROY
[I. L. R., 8 Calc., 597: 10 C. L. R., 241

———— s. 55

See LIMITATION ACT, 1877, ART. 116.
[I. L. R., 21 Mad., 8

See VENDOR AND PURCHASER—BREACH OF COVENANT . I. L. R., 15 Mad., 56
[I. L. R., 25 Calc., 208
3 C. W. N., 221
I. L. R., 21 Mad., 8

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF
[I. L. R., 13 Mad., 153

———— *Meaning of words "material defects"—Defect in title.*—The expression, "material

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

defect in the property" in s. 55 of the Transfer of Property Act (IV of 1882), includes a defect in the title to an estate. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS . . I. L. R., 20 Bom., 522

——— s. 58

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE . I. L. R., 19 Mad., 249 [L. R., 23 I. A., 32

See LIMITATION ACT, 1877, ART. 147. [I. L. R., 16 Mad., 64

See LIMITATION ACT, 1877, ART. 148. [I. L. R., 14 Bom., 113

See MORTGAGE—ACCOUNTS. [I. L. R., 14 Bom., 113

See [illegible]

[illegible]

See MORTGAGE—FORM OF MORTGAGE. [I. L. R., 9 All., 183
I. L. R., 12 All., 203
I. L. R., 14 All., 185

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES [I. L. R., 22 Calc., 33

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ. [I. L. R., 7 All., 258, 343

See REGISTRATION ACT, s. 49. [I. L. R., 15 Mad., 253

——— s. 59.

See BENGAL TENANCY ACT, s. 12. [3 C. W. N., 489

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE [I. L. R., 9 Mad., 103

See CASES UNDER DEED—EXECUTION.

See DEPOSIT OF TITLE DEEDS [I. L. R., 14 All., 238
I. L. R., 17 All., 252
I. L. R., 24 Calc., 348

See EVIDENCE ACT, 1872, s. 68 [I. L. R., 18 Mad., 29
I. L. R., 26 Calc., 228

——— *Oral agreement for kanom—Suit for ejectment by a jenmi.*—A jenmi in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on kanom for a period of twelve years. *Held* that, although no instrument had been executed and registered, the plaintiff was not entitled to eject the defendant. ITTAPPAN *v.* PARANGODAN NAYAR [I. L. R., 21 Mad., 291

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 60.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EQUITY OF REDEMPTION. [I. L. R., 21 Bom., 226

See MALABAR LAW—MORTGAGE [I. L. R., 16 Mad., 328

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY [I. L. R., 17 All., 63
I. L. R., 21 Mad., 369
I. L. R., 20 All., 23
4 C. W. N., 507
I. L. R., 22 Mad., 209

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . I. L. R., 16 Mad., 486 [I. L. R., 23 Mad., 33

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION [I. L. R., 22 All., 238

——— *Right of redemption, Extinguishment of—Breach of condition in mortgage-deed—Conditional sale.*—The breach of a condition in a mortgage-deed to the effect that on default of payment on a certain date the mortgage shall be deemed an absolute sale does not amount to an ex- [illegible]

——— ss. 61 and 62

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 16 All., 295

——— s. 62

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 8 All., 402

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . I. L. R., 16 Mad., 486 [I. L. R., 23 Mad., 33

——— s. 63

See MORTGAGE—ACCOUNTS [I. L. R., 17 All., 282

——— s. 65

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 10 Calc., 443

——— and s. 68—*Mortgagor and mortgagee—Construction of mortgage—Sale of premises at suit of a prior mortgagee—Right of a second mortgagee to sue the mortgagor personally.*—The defendants, having already mortgaged certain land to another, executed a hypothecation-bond comprising the same land in favour of the plaintiff to secure

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

a debt due by them to the plaintiff and covenanted therein to pay to him daily the proceeds of certain sales of firewood, of which the plaintiff was to credit part towards the secured debt. The defendants having failed to pay the amount due on the first mortgage, the first mortgagee obtained a decree and [illegible]

obligors had committed default so as to entitle the obligee to sue them personally under the former section. SINGJEE *v.* TIRUVENGADAM

[I. L. R., 13 Mad., 192

——— s. 67.

See LIMITATION ACT, 1877, ART. 122.
[I. L. R., 24 Calc., 473

See LIMITATION ACT, 1877, ART. 132.
[I. L. R., 20 Calc., 269

See LIMITATION ACT, 1877, ART. 147.
[I. L. R., 16 Mad., 64

See MORTGAGE—POWER OF SALE
[I. L. R., 12 Mad., 109
I. L. R., 21 Bom., 267

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 9 All., 68

1.——— *Right of suit—Suit for sale by usufructuary mortgagee*—Under s. 67 (*a*) of the Transfer of Property Act (IV of 1882), a usufructuary mortgagee whose possession has not been disturbed cannot maintain a suit either for foreclosure or for sale on non-payment of the mortgage-money. *Choudhri Umrao Singh* v. *Collector of Moradabad, S. D. A., N. W.,* 1859, *p. 13, Dulli* v. *Bahadur, 7 N. W., 55, Ganesh Kooer* v. *Deedar Buksh* [illegible]
I. L [illegible]
Sing [illegible]
v. U [illegible]

2 ——— *Usufructuary mortgage—Remedy of mortgagee.*—A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble*—The construction placed on s. 67 (*a*) of the Transfer of Property Act, 1882, in *Venkatasami* v. *Subramanya, I. L. R., 11 Mad., 88*, that a usufructuary mortgagee can sue either for foreclosure, or for sale, but not for one or other in the alternative is wrong. CHATHU *v.* KUNJAN

[I. L. R., 12 Mad., 109

3. ——— and s. 58 (*d*)—*Usufructuary mortgage with a personal covenant—Suit by mortgagee for sale—Right of suit*—In a suit for sale by a mortgagee it appeared that the mortgage comprised a covenant by the mortgagor for payment of the mortgage amount, but otherwise

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

answered th[illegible]
contained in [illegible]
Held that t[illegible]
Transfer of [illegible]
property to [illegible]
GURUVA . . . I. L. R., 14 Mad., 232

4. ——— and s. 68—*Usufructuary mortgage—Dispossession of mortgagee—Suit for* [illegible]

[illegible] part of the [illegible] enjoyment [illegible] a release. The other mortgagee under the [illegible] mortgage obtained a decree for sale on the footing of that instrument, and the mortgaged premises were sold "subject to the establishment" of the plaintiff's claim, the decree-holder purchased and afterwards assigned his rights to two of the present defendants who dispossessed the plaintiff. The plaintiff then sued the mortgagors and mortgagees and the defendants above referred to. *Held* the plaintiff was not entitled to a decree for sale. *Semble*—The plaintiff might [illegible]

5. ——— and s. 68 (*a*)—*Mortgagee's right to sue for mortgage money and for sale—Usufructuary mortgage—Covenant to repay mortgage-money—Right of suit*—The first defendant executed a usufructuary mortgage of certain land in favour of plaintiff's deceased husband. It contained a covenant to pay the mortgage-money in Chittrai Kalavadi of the year 1883. This covenant was followed by these words: "If I fail to pay the mortgage amount in the said Kalavadi, then you shall receive the said mortgage amount in the Chittrai Kalavadi of whatever year I may pay it, deliver the said lands to my possession having cleared off the arrears of Government revenue, and also give back the bond." The plaintiff sued to recover the money secured from the defendant personally and also by sale of the mortgaged property. *Held* by a Full Bench that [illegible] and that there-[illegible]
[illegible] AMMAL
[illegible], 131

6 ——— and ss. 83, 84—*Suit by mortgagee instituted before payment into Court—Right of mortgagee to a decree.*—In a suit to recover [illegible] the money [illegible] mortgagee [illegible] The [illegible] served on him, and it was not proved that the mortgagee was aware of the fact of payment into Court when he filed his suit. *Held* that the plaintiff was not debarred by s. 67 of the Transfer of Property Act from obtaining a decree. SITARAMAYYA *v.* VENKATRAMANNA . . I. L. R., 11 Mad., 371

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

7. ——— and ss. 86, 89—*Usufructuary mortgage dated 20th April 1882 sued on in 1884—Form of decree.*—In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage-money, or in default for the sale of the mortgaged property *Held* (*Semble* under the Transfer of Property Act) that the decree for sale was the right decree. VENKATASAMI *v.* SUBRAMANYA . . . . I. L. R., 11 Mad., 88

8. ——— and s. 90 —*Suit for money-decree on mortgage with personal covenant—Execution against mortgaged property—Sale of security in execution of decree*—A mortgage-deed contained a personal covenant to pay and a suit was brought on such personal liability. *Held* that the mortgagees were entitled to waive their right to proceed against the mortgaged property and to bring a suit only for a money-decree, but that they could not bring to sale the mortgaged property in execution of such decree without recourse to the provisions of s 67 of the Transfer of Property Act RAM KESHUB DEB *v.* SONATUN PAL

[2 C. W. N., 320

9. ——— *Decree for payment of money*

forth in a schedule annexed to the decree stand charged with payment of the said instalments, the said properties cannot be sold in execution of the decree, but a separate suit must be brought under s. 67 of the Transfer of Property Act. AUBHOYESSURY DABEE *v.* GOURI SUNKUR PANDAY

[I. L. R., 22 Calc., 859

10. ——— and s 99—*Charge for maintenance created by a decree, how enforced*—

proceedings in execution. *Aubhoyessury Dabee* v. *Gouri Sunkur Panday, I. L. R., 22 Calc, 859*, followed. *Ashutosh Banerjee* v *Lukhimoni Debya, I. L. R., 19 Calc., 139*, distinguished. MATANGINI DASSEE *v* CHOONEYMONEY DASSEE

[I. L. R., 22 Calc., 903

11. ——— *Usufructuary mortgage—Sudbharna bond—Covenant to repay—Construction of bond—Suit for money and for sale—Form of decree* —In a sudbharna mortgage bond it was stipulated, "having paid the principal money in the month of Chait 1297 we shall take back the document and the land. In case we fail to repay the principal money on due date, the sudbharna bond shall remain in force" *Held* that there was in this contract no

usufructuary mortgage cannot as such (*i.e.*, unless there is anything in the contract which would imply the right) sue either for foreclosure or for sale. *Umda* v. *Umrao Begam, I. L. R., 11 All., 367; Chathu* v. *Kunjan, I. L. R., 12 Mad., 109*; and *Ramayya* v. *Guruva, I. L. R., 14 Mad., 232*, referred to. *Venkatasami* v. *Subramanya, I. L. R., 11 Mad., 88*, not followed LUCHMESHAR SINGH *v.* DOOKH MOCHAN JHA . . I. L. R., 24 Calc., 677

12. ——— *Charge—Attachment without sale—Transfer of Property Act (IV of 1882), ss. 99, 100.*—The plaintiff, a judgment-creditor, had in the High Court obtained a decree against the defendant, whereby it was ordered that the defendant

order for attachment and sale of the property, but the order was reversed on appeal in May 1895, the High Court holding that the properties could not be sold in execution of the decree, but that a separate suit must be brought under s 67 of the Transfer of Property Act The plaintiff then applied to the

under s. 67 of the Transfer of Property Act. *Held* on appeal (reversing the decision of SALE, *J.*) that an order for attachment only as distinct from a sale could be made *Aubhoyessury Dabee* v. *Gouri Sunkar Panday, I L R., 22 Calc, 859*, explained *Chundra Nath Day* v. *Burroda Shoontury Ghose, I L R, 22 Calc., 813*, referred to GOURI SUNKER PANDAY *v* ABHOYESWARI DABEE

[I. L. R., 25 Calc., 262

See CHUNDRA MONI DASSEE *v* MOTTY LAL MULLICK . 2 C. W. N., 33

——— s. 68.

See LIMITATION ACT, 1877, art. 116.
[I. L. R., 21 Mad., 242

See MORTGAGE—POSSESSION UNDER MORTGAGE . I. L. R., 6 All., 298

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R., 22 Mad., 332

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1. ——— — *Mortgage of non-transferable property—Right to sue for mortgage-money*—Where a decree was obtained by a landholder for cancelment of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee

believed that the estate was transferable, the act of the former was a default depriving the latter of his security within the meaning of s. 68 (*b*) of the Transfer of Property Act (IV of 1882), and the mortgagee was therefore entitled to succeed. GANESH SINGH *v.* SUJHARI KUAR . I. L. R., 10 All., 47

2. ——— ——— *Sale of mortgaged premises under Land Acquisition Act—Personal suit by mortgagee*—The sale of mortgaged premises under the Land Acquisition Act is not a destruction of the security within the meaning of s. 68 of the Transfer of Property Act, and does not enable the mortgagee to sue the mortgagor personally. ARUMUGAM *v.* SIVAGNANA I. L. R., 13 Mad., 321

3. ——— ——— *Failure of mortgagor to give possession as stipulated—Personal suit for mortgage amount.*—In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage deed provided that in such event the mortgagee should be entitled to possession of the mortgage-premises; the mortgagor falsely alleged that all the interest due had been tendered. *Held* that the mortgagee was entitled under s. 68 of the Transfer of Property Act to sue for the amount due on the mortgage. SARAVANA *v.* CHINNAMMAL . . I. L. R., 15 Mad., 65

4. ——— *Personal decree against mortgagor—Right of suit.*—Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but provided that, if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgaged premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above. *Held* that the plaintiff was not entitled to maintain the suit either under the terms of the mortgage or under the Transfer of Property Act, s. 68. GOPALASAMI *v.* ARUNACHELLA [I. L. R., 15 Mad., 304

5. — *Right of suit—Usufructuary mortgage. Mortgagee kept out of possession by mortgagor's indirect conduct.*—Where a usufructuary mortgagee is unable to obtain possession of the mortgaged property owing to his mortgagor having executed a subsequent mortgage and placed the second mortgagee in possession, the first mortgagee may elect to sue at once for the money under s. 68 of the Transfer of Property Act, instead of for possession of the land. LINGA REDDI *v.* SAMA RAU [I. L. R., 17 Mad., 469

6. ——— — *Usufructuary mortgage*—

might renew on compliance with certain conditions. The mortgagor, on the expiry of the lease, did not fulfil the conditions of the said covenant, but refused to give up possession of the mortgaged property to the mortgagees. *Held* that the mortgagees were entitled, either under cl. (*b*) (as held by EDGE, C.J., and TYRRELL, J.) or under cl. (*c*) (as held by KNOX, BANERJI, and BURKITT, JJ.) of s. 68 of Act IV of 1882, to a money-decree for the amount due under the mortgage. *Shitab Dei* v. *Ajudhia Prasad, Weekly Notes, All. (1887), p. 269*, and *Jhabbu Ram v. Girdhari Singh, I. L. R., 6 All., 298*, distinguished. HIRA LAL *v.* GHASITU . I. L. R., 16 All., 318

7. ——— *Usufructuary mortgage—Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage-money.*—The words "any other person" in the concluding portion of cl. (*c*) of s. 68 of the Transfer of Property Act mean "any o

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gagor for the mortgage money. *Gopalasami v. Arunachella, I. L. R., 15 Mad., 304*, followed. NAKCHEDI RAM *v.* RAM CHARITAR RAI [I. L. R., 19 All., 191

8. ——— *Usufructuary mortgage—Possession not given—Suit for sale.*—A usufructuary mortgagee to whom the mortgagor fails to

mort-

money

eld by

the Full Bench in a case where the mortgage contained no covenant to pay. ARUNACHALAM CHETTI *v.* AYYAVAYYAM . I. L. R., 21 Mad., 476

——— s. 69.

See MORTGAGE—POWER OF SALE. [I. L. R., 11 Mad., 201

Limits of town of Bombay —Land situate

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LOWAY-

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TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 72.

See MORTGAGE—ACCOUNTS.
[I. L. R., 19 Mad., 327
I. L. R., 21 Mad., 32
I. L. R., 20 All., 401

——— S. 72 of the Transfer of Property Act only reproduces the rules of law which Courts of justice in India have uniformly adopted GIRDHARI LAL v. BHOLA NATH [I. L. R., 10 All., 611

——— s. 73.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[I. L. R., 15 Calc., 546

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.
[I. L. R., 20 Calc., 214
I. L. R., 24 Calc., 746

——— s. 74.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R., 18 All., 189

See MORTGAGE — SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 19 All., 527

——— *Redemption of prior mort-*

December 1889 the mortgagors executed to the plaintiff a deed of usufructuary mortgage of the same land to secure R1,400; the deed stated that the money was borrowed with a view to discharge a prior mortgage, and proceeded " as you have undertaken to pay R1,000 to the mortgagee, I credit you with R1,000 and receive R402 in cash." The plaintiff paid off the prior mortgage on the 18th April 1890, but did not obtain possession, other persons having entered in the interests of the institution. The plaintiff now sued for possession and a declaration of his mortgage right, the persons in possession and the prior mortgagee, but not the mortgagors, being joined as defendants *Held* that the

——— s. 75.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[I. L. R., 20 Bom., 390

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 19 All., 527

——— s. 76.

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R., 10 Calc., 443

See MORTGAGE—ACCOUNTS
[I. L. R., 6 All., 303
I. L. R., 15 Mad., 290

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[I. L. R., 16 All., 386

——— s. 78.

——— *Transfer of Property Act (IV of 1882), ss. 3, 78—Gross negligence—How far registration amounts to notice—Registration Act, s. 50*—Where a mortgagee prior in date duly investi-

title or searched the register,—*Held* that the prior mortgagee was not within s. 78 of the Transfer of Property of Act guilty of such gross negligence as

a universal system of registration is one of the circumstances to be taken into consideration in determining the question of gross negligence *Semble*—The question whether registration is notice or not is a question of fact, and as each case arises it should be determined whether the omission to search the register together with the other

——— s. 80.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE I. L. R., 12 All., 546

——— s. 81.

——— s. 82.

See MORTGAGE—MARSHALLING
[I. L. R., 22 All., 284

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1. ———— *Mortgage—Contribution—Apportionment of the mortgage-debt—Mortgage-decree.*—*A* brought a suit upon a mortgage-bond. Five of the defendants, who had subsequently purchased all the mortgaged properties, contended that under s. 82 of the Transfer of Property Act the mortgage debt should be apportioned between the

but simply to determine the liabilities of the pur-

2. ———— *Partial redemption of mortgage—Apportionment of mortgage debt—Contribution.*—In 1884 *A* and *B*, being divided brothers,

R700 by a conveyance attested by *X* and *Y*, who accepted R550 in discharge of a moiety of the debt secured by the hypothecation of 1884, the balance of R150 being retained by *B*. In this suit the plaintiff sought to recover the principal and interest due on his security of 1886, and he contended that *X* and *Y*, who were defendants 4 and 5, were not justified in permitting *B* to retain R150 of the price, and that that sum should accordingly be debited against them in the accounts. *Held* that, under the Transfer of Property Act, s. 82, plaintiff was not entitled to compel defendants 4 and 5 to satisfy their debt against *B*'s house so far as it extended. NEELAMEGAN *v.* GOVINDAN . I. L. R., 14 Mad., 71

3. ———— *Mortgage debt, Apportionment of—Contribution, Suit for—Principles upon*

of this mortgage, some of the villages comprised therein were liable under one or both of two decrees obtained on prior mortgages. Subsequently to the decree of the 28th of February 1878, four of the villages affected by that decree were sold in execution of a simple money-decree and were acquired from the purchasers by one *A*. On the 20th of August 1879 and the 20th of August 1882 these same four villages were brought to sale in execution of the decree of the 28th of February 1878, and were sold for R14,500. Thereupon the former purchaser *A* brought a suit against the representative of the mortgagee of 1874 and certain other persons for contribution, alleging that the said four villages had been sold for considerably more than the amount for which they were proportionately liable under the mortgage decree; that the defendants were owners of villages which were equally liable with his (the plaintiff's) villages under the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

decree of the 28th of February 1878, but which had contributed nothing towards the satisfaction of that decree; that six of those villages and an eighth share in a seventh had been purchased by *S* (the predecessor in title of one of the defendants *H*) in execution of simple money-decrees, and that a share in an eighth village had been similarly purchased by the

—— s. 83.

See RIGHT OF SUIT—REVENUE, SALE FOR ARREARS OF . I. L. R., 13 All., 195

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R., 13 Mad., 316

1. ———— *Deposit in Court by mortgagor.*—The deposit intended by the Transfer of Property Act, s. 83, must be made unconditionally. Accordingly when the mortgagor in making the deposit prays that the amount should be paid out to the mortgagee on his producing certain deeds, the provisions of the section are not complied with. NANU *v.* MANCHU . I. L. R., 14 Mad., 49

2. ———— *Deposit in Court by mortgagor—Full and unconditional tender.*—The fact that a certain sum of money tendered under s. 83 of the Transfer of Property Act, and accepted by the mortgagee as the full amount due, is afterwards denied by him to be the full amount, and that the tender is accompanied by a claim to a registered receipt (to which the mortgagee agrees) and to the return of the title-deeds, does not render the tender conditional and therefore invalid. *Nanu v. Manchu, I. L. R., 14 Mad., 49*, distinguished. KORA NAYAR *v.* RAMAPPA I. L. R., 17 Mad., 237

3. ———— and s. 84—*Deposit in Court to the account of the mortgagee of amount remaining due on mortgage—Deposit to credit of persons not entitled in addition to persons entitled.*—A mortgagor before bringing a suit for redemption deposited the mortgage-money in Court to the credit of persons who were not entitled to it in addition

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

to that of persons who were entitled to it *Held* that he was not entitled to claim the benefit of ss. 83 and 84 of the *Transfer of Property Act*, inasmuch as the persons really entitled to the money could not draw it. MADHAVI AMMA *v.* KUNHI PATHUMMA . . I. L. R., 23 Mad., 510

——— s. 84.

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 8 All., 502

——— s. 85.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.
[I. L. R., 27 Calc., 724

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

——— s. 86.

See s. 2
[I. L. R., 12 Calc., 436, 505, 583
I. L. R., 11 Calc., 582
I. L. R., 6 All., 262
I. L. R., 14 Calc., 599

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE I. L. R., 20 Calc., 279

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

See LIMITATION ACT, 1877, ART. 135
[I. L. R., 12 Calc., 614

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 13 Calc., 346

——— ——— *Power of Court to make preliminary a*[illegible]
Pendency [illegible]
made un[illegible]
does not [illegible]
from mal[illegible]
v. RAM H[illegible]

——— s. 87.

See APPEAL—DECREES
[I. L. R., 12 All., 61
I. L. R., 14 All., 520

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE I. L. R., 20 Calc., 279
[I. L. R., 25 Calc., 311

See LIMITATION ACT, 1877, ART. 147.
[I. L. R., 16 Mad., 64

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE
[I. L. R., 20 All., 357

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R., 16 Calc., 246
[I. L. R., 20 All., 358, 446
I. L. R., 19 Mad., 40
I. L. R., 19 All., 180
I. L. R., 22 Mad., 133
I. L. R., 27 Calc., 705

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 13 Calc., 346

——— s. 88.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
[I. L. R., 16 All., 259

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES I. L. R., 20 All., 397

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE I. L. R., 20 Mad., 78
[I. L. R., 25 Calc., 311

See HINDU LAW—ALIENATION—ALIENATION BY FATHER I. L. R., 15 All., 75

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHT OF MORTGAGEES.
[I. L. R., 18 All., 31

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[I. L. R., 22 Mad., 286

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 23 Calc., 682

——— ss. 88 and 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE
[I. L. R., 18 Calc., 139
I. L. R., 25 Calc., 133

See CIVIL PROCEDURE CODE, 1882, s. 257A.
[I. L. R., 19 All., 186

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION I. L. R., 13 All., 278

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE
[I. L. R., 19 All., 520
I. L. R., 20 All., 302, 357

[illegible]

——— ss. 88, 89, 90.

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTION IN EXECUTION OF DECREE.
[I. L. R., 24 Calc., 473

See DEKKAN AGRICULTURISTS ACT, s. 44.
[I. L. R., 23 Bom., 644

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I L. R., 21 Calc., 818

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS . I L. R., 17 All., 581
[I. L. R., 18 All., 316
I. L. R., 19 All, 174
I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 122
[I. L. R, 24 Calc., 473

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 16 All., 23
I. L. R., 22 Calc., 924

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO EXECUTION.
[I. L. R., 23 Bom., 644

——— s. 90.

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED
[I. L. R, 24 Calc., 766

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 21 All., 453

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . . I. L. R., 18 All., 371

1. ——————— *Decree for sale on a mortgage—Mortgaged property—Sale in execution of a decree held by a different mortgagee*—In order to make the remedy provided by s. 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the person applying for a further decree under s. 90. That section does not apply where the mortgaged property has been sold [illegible]

2. ——————— and ss. 88 and 89—*Decree for sale of mortgaged property—Decree not satisfied by sale—Recovery of balance due on mortgage*—The decree contemplated by s 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed, and it is not necessary to institute a fresh suit to obtain such decree. RAJ SINGH *v.* PAMANAND
[I. L. R, 11 All., 486

——— ss 92 and 93.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW . I. L. R., 15 Mad., 170

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

See RES JUDICATA—CAUSE OF ACTION.
[I. L. R., 11 All., 388
I. L. R., 15 Mad., 366
I. L. R., 17 Mad., 98
I. L. R, 19 All., 202

——— s. 93.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L R., 23 Mad., 521

See MORTGAGE — REDEMPTION — MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 16 Mad., 214

——————— *Mortgage—Redemption—Decree for payment and redemption within six months—Application for execution of decree after six months had expired.*—S. 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force CHENNAYA *v.* MALKAPA . . I. L. R, 20 Bom., 279

——— s. 95.

See LIMITATION ACT, 1877, ART. 148.
[I. L. R., 8 All., 295

——— s. 98.

See MORTGAGE—FORM OF MORTGAGE
[I. L. R., 12 All., 203
I. L. R., 21 Mad., 1

——— s. 99.

See LIMITATION ACT, 1877, s 8
[I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS
[I. L. R., 12 All., 64

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 22 Bom., 624
[I. L. R., 23 Bom., 119
I. L. R., 22 Mad.. 347, 372
I. L. R., 23 Mad., 377

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.
[I. L. R, 16 Mad., 481

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 18 All., 325

1. ——————— *Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Sale of mortgaged property in execution of decree on a money-bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

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2. ——— *Money-decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee*—A usufructuary mortgagee left the mortgaged premises in the possession of the mortga-

holder attached the mortgaged premises in execution, and having brought them to sale and purchased them himself, he sued for possession. *Held* that the sale was invalid under the Transfer of Property Act, s. 39. DURGAYYA *v.* ANANTHA [I. L. R., 14 Mad., 74

See VIGNESWARA *v.* BAPAYYA [I. L. R., 16 Mad., 436

3. ——— *Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs.*—Certain usufructuary mortgagees, not having been put in

Shaw
ed to
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TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

Property Act (ss. 2 and 99) has no retrospective effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force. NARANAPPA *v.* SAMACHARLU . . I. L. R., 19 Mad., 382

5. ——— and s. 67—*Sale of mort-*

v. MADHUB LALL SHAW CHOWDHRY [I. L. R., 21 Calc., 34

6. ——— and s. 67—*Usufructuary mortgage—Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent.*—*Held* that a usufructuary mort-

v. NAJM-UN-NISSA . . I. L. R., 16 All., 415

7. ——— *Sale of mortgaged property—Zur-i-peshgi mortgage—Purchase by the mortgagee*—S. 99 of the Transfer of Property Act (IV of 1882) applies to zur-i-peshgi mortgages, and a purchase of the mortgaged property by the mort-

MOTI RAM TEWARY *v.* RAM LAKHAN SINGH [3 C. W. N., 290

8.——— and s. 67—*Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act*—A mortgagee obtained a decree on the 15th February 1883
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TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

9. ——— *Mortgage-decree—Transfer of Property Act (IV of 1882), Decree regarded as mortgage decree under—Sale of mortgaged property in execution of decree.*—In a suit for recovery of

R5,387 10-13, together with costs and interest at the rate of 6 per cent. per annum up to the date of realization, and that the mortgaged properties be made liable (*pae band kea jae*) for realization of the decretal money." *Held* that the decree was to be regarded as a mortgage-decree governed by the Transfer of Property Act, though not made in the

RAHMAN . . . I. L. R., 26 Calc., 166

10 ——— and s. 67—*Landlord becoming mortgagee to tenant—Power to sell tenure in execution of rent-decree.*—When a landlord has taken a mortgage of the holding of a tenant, he is

DUTT .

——— s. 100

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY

[I. L. R., 14 All., 273

See LIMITATION ACT, 1877, ART. 148.

[I. L. R., 8 All., 295

See MORTGAGE—CONSTRUCTION.

[I. L. R., 13 All., 28

See MORTGAGE—FORM OF MORTGAGE

[I. L. R., 9 All., 158

1. ——— *Charge on immoveable property—Mortgage—Construction of document—Limitation.*—Under s. 100 of the Transfer of Property Act, for a document to create a charge on immoveable property, it must be a document that creates such charge immediately on its execution, and not operates only as a charge at some future time, such as in the event of non-payment of the money

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

secured by it, the latter being the possibility of a charge ultimately arising on the land, and not "a charge" within the meaning of that section. *A* lent *B* R99, and *B* executed a document on the 24th July
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to certain land and that *A* should take possession

suit on the 3rd August 1885 to recover the ... *Held* that the document did not amount to a mortgage, nor did it create a charge under s. 100 of the Transfer of Property Act, and that the suit was barred by limitation, three years being the period applicable. MADHO MISSER *v.* SIDH BENAIK UPADHYA *alias* BENA UPADHYA

[I. L. R., 14 Calc., 687

2. ——— and s. 58—*Hypothecation bond, Suit on.*—The period of limitation for suits upon hypothecation-bonds which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under sch. II, art. 132, of the Limitation Act of 1877. *Aliba v. Nanu, I. L. R., 9 Mad. 218*, followed. *Per* MUTTUSAMI AYYAR, J.—"The transaction in suit appears to be of the kind described in s. 100 of the Transfer of Property Act, which defines how a charge is created;" but "it seems to me that the Transfer of Property Act ... with the

gages" RANGASAMI *v.* MUTTUKUMARAPPA

[I. L. R., 10 Mad., 509

3. and s. 68—"*Charge*"— ... of s. 63

having a charge within the mea... section. *Semble*—The "charge" referred to in s. 63 of the Bengal Tenancy Act (VIII of 1885) is not such a "charge" as that defined by s. 100 of the Transfer of Property Act. *Lolit Mohun Roy v. Bindodas Dabee, I. L. R., 14 Calc., 14*, explained. FOTICK CHUNDER DEY SIRCAR *v.* FOLEY

[I. L. R., 15 Calc., 492

——— s. 101.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES

[I. L. R., 16 Mad., 94

I. L. R., 20 Mad., 274

——— s. 104, Rules framed under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 25 Calc., 703

4 C. W. N., 474

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

section, and the rules made by the High Court

of the Code of Civil Procedure as regards sales held in execution of mortgage-decrees *Kedar Nath Raut v. Kali Charan Ram, I L. R, 25 Calc, 703,* explained DAKSHINA MOHAN ROY v. BASUMATI DEBI . . . . 4 C. W. N., 474

——— s. 105.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I. L. R., 24 Calc., 440
2 C. W. N, 292

——— s 106.

See FISHERY, RIGHT OF.
[I. L. R., 20 Calc, 446

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R, 7 All., 596, 899
I L. R., 17 All., 45
I. L. R., 20 Bom., 759
I. L. R., 22 Bom., 754
2 C. W. N., 383
4 C. W. N., 572, 790

See ONUS OF PROOF—LANDLORD AND TENANT . I. L R, 13 Mad., 60

——— s. 107.

See REGISTRATION ACT, s. 17, cl (*d*)
[I. L. R, 17 Mad, 275
I. L. R., 21 Mad., 109

See REGISTRATION ACT, s 18
[I. L. R., 24 Calc, 20

——— *Hât, Lease of—General Clauses Act (I of 1868), s 2, cl. 5—Immoveable property—Registration Act (III of 1877), s 17* —A suit was brought for rent of a hât on the basis of a verbal settlement for three years at an annual jumma of R370. The defendants denied the settlement.

——— s 108.

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.
[I. L R., 22 Calc., 820

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET I. L. R., 17 Mad., 98
[I. L. R., 23 Bom., 15

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.
[I. L. R., 24 Calc., 440

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R., 17 Mad., 293
[I. L. R, 22 Calc., 494
4 C. W. N., 574

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R., 13 Mad., 60

——— *Transfers before passing of Transfer of Property Act.*—S. 108 of the Transfer of Property Act does not apply to transfers which took place before the passing of the Act. HARI NATH KARMAKAR *v.* RAJ CHANDRA KARMAKAR
[2 C. W N., 122

——— s. 111

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
[I. L R., 7 All., 596, 899
I. L. R., 20 Bom., 759

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.
[I. L. R, 20 Bom., 354
I. L. R, 24 Calc., 440

See LEASE—CONSTRUCTION.
[I. L. R., 17 All., 826

——— s. 114.

See SMALL CAUSE COURT, PRESIDENCY TOWNS — JURISDICTION — IMMOVEABLE PROPERTY I. L. R., 17 Mad., 216

——— s. 116.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R., 20 Bom, 759

——— s. 117.

See BENGAL TENANCY ACT, SCH III, ART. 2
[I. L R., 27 Calc., 205

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I L. R., 20 Bom, 354

See LEASE—CONSTRUCTION
[I L R., 17 Mad., 98

——— s. 118.

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ . I. L. R., 7 All., 626

See TRANSFER OF PROPERTY.
[I. L. R., 11 Mad., 459

——— *Exchange—Partition* —Some of the co-owners possessing an undivided share in several properties took by arrangement a specific property in lieu of their shares in all the properties *Held* that this transaction was not an exchange

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

within the meaning of s. 118 of the Transfer of Property Act, but the completed transaction amounted to a partition which is not required by law to be effected by an instrument in writing *Firth v. Osborne, L R, 3 Ch. D., 618,* referred to. GYANNESSA v. MOBARAKANNESSA I. L. R., 25 Calc., 210 [2 C. W. N., 91

——— s. 119—*Exchange—Mutual covenants subsequently entered into to support title—Maxim "expressum facit cessare tacitum."*—The plaintiff and defendant effected an exchange of land; subsequently they executed to each other documents, of which that executed by the defendant recited the exchange and continued, "If any claim or dispute arises, I hereby bind myself to settle it." If I do not so get the dispute settled, I hereby bind myself to pay an amount not exceeding R4,014 8-6 at the rate of R1-4-0 per ... of your p ... been ou ... sued to ... change. ... Property ... covenant in the document quoted above. SUBRAMANIA AYYAR v SAMINATHA AYYAR [I. L. R., 21 Mad., 69

——— ss. 122, 123.

See GIFT . I. L. R., 20 All., 392

——— s 123.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION. [I. L. R, 6 All, 634

See GIFT . I. L. R., 19 Mad., 433

——— *Hindu law—Gift—Delivery of possession—Immoveable and moveable property.*—Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary. *Semble*—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer. DHARMODAS DAS v. NISTARINI DASI [I. L. R., 14 Calc., 446

BAI RAMBAI v. BAI MONI [I. L. R., 23 Bom., 234

——— ss. 123 and 129.

See HINDU LAW—GIFT—REQUISITES FOR GIFT . I. L. R., 16 Calc., 446 [I. L. R., 20 Calc., 464 I. L. R., 23 Bom., 234

——— s. 127.

See GIFT . I. L. R., 20 Mad., 147

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 131

See LAND REGISTRATION ACT, s. 78 [I. L. R., 23 Calc., 87

1. ——— *Transfer of debts—Notice of transfer—Assignment of mortgage—Mortgagor, Liability of, to assignee of mortgagee when no notice of assignee given.*—An assignment is perfectly valid, though the notice referred to in s. 131 of the Transfer of Property Act has been ...

Act makes no alteration in the law as it obtained in England previous to the passing of that Act and as laid down in the cases cited in the note to *Ryall v. Rowles, 2 W. & T. L. C, 777,* the first portion of the section merely fixing the time when the section comes into operation and the latter providing for the protection of the debtor if he deals with the debt before that time. Where, therefore, an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee and no notice of the assignment ...

the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it. LALA JUGDEO SAHAI v. BRIJ BEHARI LAL . . I. L. R., 12 Calc., 505

2. ——— *Decree—Debt.*—A decree is not a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act A "debt" under that section means an actionable claim, and not a claim which has already passed into a decree AFZAL v. RAM KUMAR BHUDRA [I. L. R., 12 Calc., 610

3. ——— *Transfer of debt—No ... to debtor.*—*Held* that an assignment by endorsement of a registered bond hypothecating certain crops was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effects of s 131 of the Transfer of Property Act was merely to suspend the operation of the assignment up to the time when such notice was received, that in this case the assignment would come into operation against the obligor when he ...

Lala Jugdeo Sahai v. Brij Behari Lal, I. L. R., 12 Calc., 505, referred to. KALKA PRASAD v. CHANDAN SINGH . . I. L. R., 10 All., 20

4. ——— and s. 135—*Notice—Assignment of actionable claim—Rights of transferee for value.*—A sued for principal and interest due on a mortgage assigned to him for value by the mortgagee. No notice of the assignment

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

was given to the mortgagors before the plaintiff's demand. The sum sued for exceeded the amount paid by the plaintiff for the assignment and reasonable interest on it: but such amount was not paid or tendered to the plaintiff *Held* that the plaintiff was entitled to a decree for the whole amount due on the assigned mortgage SUBBAMMAL *v.* VENKATARAMA . . . I. L. R., 10 Mad., 289

5. ——— *"Debt"—Transfer of a debt—Assignment of decree—Notice of assignment—Civil Procedure Code (Act XIV of 1882), s. 232*—A decree is not a "debt" within the

Procedure Code is sufficient. *Afzal v Ram Kumar Bhudra, I L R, 12 Calc, 610,* followed DAGDU *v* VANJI . . I. L. R., 24 Bom., 502

——— s 132.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS

[I. L. R, 12 Mad, 500

——— *Assignment of debt—Notice to debtor of assignment—Service of the summons in suit for debt—Stat. 37 Vict, c. 60, s 25.*—

NARAYAN . I L. R, 21 Bom, 60

——— s. 135.

See LIMITATION ACT, 1877, Art. 120

[I L. R., 15 Mad., 382

1. ——— *Transferee of a claim for smaller value—Recovery of full amount of debt.*—It is not the object of s 135 of the Transfer of Property Act absolutely to prevent a transferee, who has purchased a claim at a smaller value, from recovering the full amount of the debt due from the debtor. GRISH CHANDRA *v.* KASHISAURI DEBI

[I. L. R., 13 Calc, 145

2 ——— *Right of suit—Suit to set aside a document—Actionable claim*—The co-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

3 ——— and s. 52—*Sale of immoveable property by person out of possession—Actionable claim*—A transfer of ownership of immoveable property is not a sale of an actionable claim, although the owner at the time of the sale may not be in possession *A* and *B*, being owners of an 8 annas share of certain immoveable property, sold it under a kobala to *C* and *D* At the time of the sale *X* and *Y* were in adverse possession of the share *Held* that the transaction was a sale under s 52 of the Transfer of Property Act, to which the provisions of Ch VIII of the Act, specially those of s 135, were inapplicable *Semble*—S 135 refers to claims for money of some kind or the like, although the money claim may be a charge on immoveable property. MUDUN MOHUN DUT *v.* FUTTARUNNISSA

[I. L. R, 13 Calc, 297

4. ——— *Transfer of a claim for smaller value—Transferee not entitled to recover more than price paid for claim*—S 135 (*d*) of the Transfer of Property Act (IV of 1882) means that if a creditor or party having an actionable claim against another has put into Court and has proceeded to the point at which judgment has been delivered affirming it, or the liability of the defendant

there any probability that the process of the Court will be misused. On the other hand, if one who has

Chedambara Chetty v. Renga K. M. V. Puchaiya Naickar, L. R, 1 I. A., 241: 13 B. L. R, 509, and *Ram Coomar Coondoo v. Chunder Canto Mookerjee, L. R., 4 I. A. 23: I. L R, 2 Calc, 233,*

Held that the assignee's proceedings were of the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

[I. L. R., 9 All., 476

5. ——— *Actionable claim—Transfer of a claim for amount less than its value—Recovery of full amount of debt*—S. 135 of the Transfer of Property Act does not protect a defendant from payment of the full amount payable under a claim transferred for a sum less than that recoverable under the claim, where the money is recovered by suit after a contest as to the liability of the defendant *Grish Chandra* v *Kashisauri Debi, I L R, 13 Calc, 145,* followed KHOSHDEB BISWAS *v.* SATAR MONDOL

[I. L. R, 15 Calc, 436

6 — ——— — and ss. 136, 137—*Apportionment*—

R3,000 between the same parties after the 1st July 1882 for R1,500. *B* had previously purchased the two bonds at a sale in execution of the decree of the Subordinate Judge's Court at N for R5

exercising their functions in a particular Court are precluded from buying any actionable claim cognizable by that Court In the absence of evidence showing that *B* practised as a pleader regularly in the Subordinate Court at N, the Court declined to hold that the assignment to him was inoperative altogether. There was, however, the Court held, no doubt that the assignments to him and by him were governed by s. 135, and that, under s 137, the person to whom a debt is transferred takes it subject to the liabilities to which the transfer was subject at the date of the transfer Upon the facts of the case B was clearly not entitled to recover more than R1,500, whatever might be due on the document. As he was the purchaser of an actionable claim, s 135 of the Transfer of Property Act applied to him, and he could not

SUBRAMANYA I. L. R., 11 Mad., 66

7. ——— *Transfer of actionable claim.*—The first paragraph of s. 135 of the Transfer of Property Act has no application to a case in which the debtors deny the existence of the claim altogether, and where the purchaser of the claim has to obtain judgment affirming the claim before any satisfaction

Grish Chandra v *Kashisauri Debi, I. L. R., 13 Calc., 145; Khoshdeb Biswas* v. *Satar Mondol, I. L*

8. ——— *Assignment for value of a debt—Decree to which the assignee is entitled*—

Jahangir Khan, I. L. R., 9 All., 476, approved. NILAKANTA *v.* KRISHNASAMI

[I. L. R., 13 Mad., 225

viously to the assignment obtained a consent against the obligors for an instalment of the money due upon it, and had also made good his claim to the land comprised in it as against an attaching creditor of the obligors. *Held* that there had been no adjudication on the claim to exclude the rule in the Transfer of Property Act, s. 135, and accordingly the plaintiff was entitled to recover only the sum paid by him for the assignment with interest from the date of payment to the date of the decree. RAMACHANDRA *v.* VENKATARAMA . I. L. R., 13 Mad., 516

10 ——— *Actionable claim—Transfer of claim for an amount less than its value—Suit by transferee to enforce claim—Defendant not*

title and for possession of the property. A suit for that purpose was brought by the assignee, the defendants being the conditional vendors, and also the assignors under the deed above-mentioned. The latter made no defence, but admitted the justice of the plaintiff's claim, and a decree was passed in favour of the plaintiff against them as well as against the other defendants. *Held* that the answering defendants, the conditional vendors, could not take advantage of the terms of the assignment for the purpose of defeating

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court [illegible]

of the Transfer of Property Act (IV of 1882), and would be entitled to take the bargain off the plaintiff's hands by paying to him the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date of its repayment to him. *Jani Begam v. Jahangir Khan, I. L. R., 9 All. 476,* followed. *Grish Chandra v. Kashisauri Debi, I. L. R., 13 Calc., 145,* and *Khoshdeb Biswas v. Satar Mondol, I. L. R., 15 Calc., 436,* dissented from. HAKIM-UN-NISSA *v.* DEONARAIN . I. L. R., 13 All., 102

11. ——— — *Actionable claim—Mortgage-bond hypothecating immoveable property—Per* PETHERAM, *C.J.*, NORRIS, O'KINEALY, and [illegible]

[illegible]

12. ——— *Mortgage—Actionable claim—Assignment of mortgage—Liability of mortgagor—Steps to be taken by mortgagor to obtain benefit of s. 135.*—A mortgage is an actionable claim under s. 135 of the Transfer of Property Act. In order to obtain the benefit of that section, the mortgagor must pay "the price and incidental expenses, etc., with interest" into Court either or before the action. *Muchiram Barik v. Ishan Chunder Chuckerbutti, I. L. R., 21 Calc., 568,* followed. Where a mortgagor some months after suit was brought tendered the amount due, on the assignment

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

of the mortgage to the assignee, and the tender was refused and no actual payment was made into Court,—*Held* (by PETHERAM, *C.J.*, NORRIS and [illegible]

13. ——— — *Assignment of mortgagee's rights under his mortgage—Actionable claim.*—An assignment of a mortgagee's rights under a mortgage is not an assignment of an "actionable claim" within the meaning of s. 135 of the Transfer of Property Act (IV of 1882). MOTI RAM *v.* JETH MAL . I. L. R., 16 All., 313

14. ——— — *Actionable claim—Rights of usufructuary mortgagee whose mortgagor has failed to put him in possession of the mortgaged property—Assignment of mortgagee's rights.*—The transfer by a usufructuary mortgagee, whose mortgagor has failed to give him possession of the [illegible]

Transfer of Property Act (IV of 1882). RANI *v.* AJUDHIA PRASAD I. L. R., 16 All., 315

15. ——— *Assignment of an actionable claim—Suit by the assignee—Recovery of the full amount of debt.*—*V* owed a sum of R483 to *G*, who assigned the debt to the plaintiff for R200. The plaintiff sued *V* to recover the whole amount. *Held* that, under s. 135 of the Transfer of Property Act (IV of 1882), the plaintiff was entitled to recover the whole amount of the debt. VISHNU MAHADEV SONAR *v.* DAGADU I. L. R., 19 Bom., 290

16. ——— *Actionable claim—Mortgage—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses.*—Where the debtor without denying the claim offers to pay the purchaser the actual price paid by him with interest and expenses of the sale and merely disputes the amount of these items,—*Held* that such a case does not come under the exception in cl. (*d*) of s. 135 of the Transfer of Property Act, and the first paragraph of that section applies. *Held* also that it is not necessary to deposit the money in Court in order to gain the benefit of s. 135 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK

[I. L. R., 23 Calc., 713

17. ——— — *Actionable claim—Tender.*—When the plaintiff, as an assignee of an actionable claim, brought a suit for its enforcement without having previously given a notice to the defendants of his purchase, and on the suit being called on for hearing the latter prayed to be discharged from liability by paying the price paid by the plaintiff in purchasing the same with costs and all incidental expenses and asked for a month's time to pay the money,—*Held* that the plaintiff was entitled to a decree for the full amount of his claim, and not simply the amount

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

at which he purchased the bond in question with costs and incidental expenses, inasmuch as there was neither any payment before judgment was delivered nor was any tender of payment made at the time PUNDIT CHARAN SIRKAR v. GANGADHAR DAS [2 C. W. N., 147

18. ———— *Actionable claim—Assignment of simple mortgage before due date.*—The term "actionable claim," as used in s. 135 of Act IV of 1882, means a claim in respect of which a cause of action has already matured, and which, subject to procedure, may be enforced by suit. *Held* that the assignment for value of a simple mortgage befc [illegible] a sale of an [illegible] of s. 135 of [illegible] *Prasad, I. L. R., 10 All.,* 310, referred to and explained. SHIB LALL v. AZMAT-ULLAH [I. L. R., 18 All., 265

19. ———— *Mortgage—Actionable claim—Transfer of Property Act, s. 54—Transfer* [illegible]

The amount of interest is governed by s 84 of the Transfer of Property Act. DEBENDRA NATH MULLICK v. PULIN BEHARY MULLICK [I. L. R., 24 Calc., 763

20. ———— and s. 139—*Insolvent Act (Stat. 11 & 12 Vict., c. 21), s 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt.*—An insolvent, having filed his schedule in April 1881, obtained his personal discharge in September 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under s. 86 of the Insolvent Act (11 & 12 Vict., c 21). The schedule contained the names of thirteen creditors The insolvent afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to R1,180-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent The insolvent contended that under s 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought. *Held* that they were entitled to be paid the full amount of the scheduled debts *If the debts at the time of purchase were to be regarded as debts in respect of promissory notes,* s. 139 of the Transfer of Property Act applied, and if the claim was under the judgment entered up against the insolvent, then clause (*d*) of s 135 applied. IN THE MATTER OF RUNCHOD KHUSHAL . I. L. R., 21 Bom., 572

21. ———— *Assignment of mortgage by mortgagee—Suit by assignee—Payment into Court by defendants (representatives of mortgagor) of price paid to the assignor (mortgagee) without admitting the mortgage or assignment—Interest —Payment in grain—Damdupat.*—In a suit by the assignee of a mortgage to recover the amount due on [illegible]

the whole amount legally due on the mortgage, and that s 135 of the Transfer of Property Act did not apply. Payment into Court under such circumstances was only a conditional tender, and such a conditional tender is not a payment under the section. ANANDRAO BABAJI BARVE v. DURGABAI [I. L. R., 22 Bom., 781

22 ———— *Actionable claim—Claim affirmed by a Court—Consideration for assignment —Limitation—Construction of decree.*—A, as guardian of the widow and legatee of the depositor, claimed a sum of money in the hands of a Bank, to [illegible]

the money to *B* on his giving security to pay it out [illegible] succession certificate *B* [illegible]

actually paid by him with interest and [illegible] expenses and costs, as the case was not within the Transfer of Property Act, s 135 (*d*), since, on the true construction of the decree of 1889, all that had been decided was who should hold the money pending the settlement of the rights of the rival claimants. SURYANARAYANA SASTRI v. RAMAMURTI PANTULU [I. L. R., 21 Mad., 253

23 ———— *Actionable claim—Person claiming the benefit of s. 135 not obliged to pay before judgment the amount paid by the assignee,* [illegible]

until the amount of the price was [illegible] and declared by the Court. There is nothing in the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

section to preclude the debtor from securing his discharge by payment of the decree *Rani v. Ajudhia Prasad, I. L. R., 16 All., 315; Muchiram Barik v. Ishan Chunder Chuckerbutti, I. L. R., 21 Calc., 568;*

[I. L. R., 20 All., 327

24. ———— *Actionable claim—Sale of mortgagor's interest in mortgaged property*—The sale by a mortgagor of his interest in the property mortgaged is not the sale of an actionable claim within the meaning of s. 135 of the Transfer of Property Act, 1882. Tota Ram v. Lala

[I. L. R., 20 All., 468

25. ———— *Sale of actionable claim—Mortgagee by assignment—Assignee of prior lien.*—The assignee of a mortgagee obtained a decree for the principal and interest due under the

26. ———— "*Judgment of a compe-*

recover the amount of the judgment with interest Defendant, amongst other defences, contended that the transfer was not supported by consideration; and the Subordinate Judge, finding as a fact that only R5,5.0 had been paid therefor,

1. ———— s. 136—*Purchase of elephant with authority to recover the same from a stranger*

elephants from any person in possession of them. The plaintiff sued the defendants to recover possession of an elephant which had been trapped and

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concluded.*

was in defendant's possession at the time of the transfer to plaintiff. The suit was dismissed on the ground that the plaintiff had brought an ... of the ... at the ... Kuri-kal ...

I. L. R., 11 Mad., 445

2. ———— *Purchase of actionable claim by officer of Court—Jurisdiction, Meaning of term.*—S. 136 of the Transfer of Property Act, 1882, prov... justi... the ... exerc... in a District Court, having purchased the rights of the mortgagee in a bond, sued to recover R2,225 due upon it in the Court of the District Munsif. *Held* that, as the claim did not fall under the immediate jurisdiction of the District Court, s. 136 was not applicable. Singaracharlu v. Sivabai

[I. L. R., 11 Mad., 498

TRANSFER OF PROPERTY ACT AMENDMENT ACT (III OF 1885), s. 3.

See Vendor and Purchaser—Completion of Transfer

[I. L. R., 19 Calc., 623

TRANSLATION.

See Copyright . I. L. R., 14 Bom., 586

[I. L. R., 19 Bom., 557

TRANSPORTATION.

See Sentence—Transportation

———— Absence by reason of—

See Limitation Act, 1877, s. 7

[1 B. L. R., S. N., 25

TRANS SHIPMENT PERMIT.

See Sea Customs Act, s. 128

[I. L. R., 4 Bom., 447

TREASON.

See Waging War against the Queen.

[7 B. L. R., 63

TREASURE TROVE.

1. ———— Beng. Reg. V of 1817—*Hidden treasure—Duty of finder of hidden treasure*— ... —Some ... mindari, ... e finder ... to the treasure, but the provisions of Regulation V of 1817, with regard to the finding of hidden treasure, were

TREASURE TROVE—*continued.*

not complied with by them, and on this ground the Judge held they were not entitled to it. The Government claimed the money on the ground that the provisions of the Regulation had not been complied with, and it was made over to the Collector, an appeal to the High Court being dismissed IN RE UMA CHARAN BANERJEE . . 7 B. L. R., Ap., 3

S. C. OMA CHURN BANERJEE *v.* COLLECTOR OF HOOGHLY . . . . 15 W. R., 525

2. —— s. 6 and s. 2—*Valuable property—Ornament.*—The owner of the house where an ornament has been found concealed may, under s. 6, Regulation V of 1817, retain possession of it as a "valuable property" under s. 2, if no one else has substantiated any claim thereto. PREM MOYEE DEWAH *v.* NOBIN CHUNDER CHOWDHRY [4 W. R., Mis., 8

3.— Mad. Reg. XI of 1832—*Right to idols discovered—Right of owner of property—Right of trespasser—Omission to give notice to authorities.*—Certain idols and vessels of copper were discovered accidentally by one Shaik Mira and his brother, while digging for stones, in a masonry building underneath the ground in a rather elevated part of the bed of the tank of Anandur which belongs to the zamindari of Shivaganga. No intimation of the discovery was given by the finders to any public authority, but the Subordinate Magistrate, *being informed of it by the police, proceeded to the* spot and recovered the idols on the third or fourth day after they were found. They were then sent by the Magistracy to the Court of the Principal Sudder Ameen of Madura to be dealt with under the provisions of Regulation XI of 1832. Proclamation inviting claimants was made and petitions asking for possession of the idols were presented by three parties—first, by the Rani of Shivaganga, on the ground that she was trustee of the devastanams on her [illegible]

and directed that they should be delivered to her. The finder appealed to the Civil Court, which re- [illegible] seen. [illegible] this [illegible] the [illegible] r ap- [illegible] pro- [illegible]

what had been hidden in former times in the soil now belonging to her, that it had been found that these idols were hidden in a stone chamber specially appropriated to that purpose, and that she could not therefore claim a title as owner. As to the objection that the finder being a trespasser, could not benefit,—*Held* that it was unnecessary to consider this objection unless the Rani had some right or title to the treasure, the same as she had in the soil of the tank; that she had not such right, and therefore that the contention as to the right to the property found lay between the finder and the State, which had made no claim. An objection, not before taken, was allowed to be argued at the hearing, *viz.*, that the formalities prescribed by the Regulation had not been complied with. *Held* that, though immediate notice had not been given by the finder, the property was within three or four days of its discovery in the hands of the authorities, who might be said therefore to have supplied the necessary notice. KATTAMA NATCHIAR *v.* MUHAMMAD MIRA RAVUTAN . . . . . 7 Mad., 150

4.— Treasure Trove Act (VI of 1878)—*Right of a talukhdar in Gujarat to treasure trove—Rights of Government—Criminal Procedure Code (1882), ss. 523 and 524—Property placed at the disposal of Government.*—A bag containing R248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District Magistrate [illegible]

His claim was rejected, and an order was passed [illegible]

Court, that, in the absence of any evidence to prove the talukhdar's right to treasure trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the finder, nor were any proceedings taken under it. SECRETARY OF STATE FOR INDIA *v.* VAKHATSINGJI MEGHRAJJI . I. L. R., 10 Bom., 668

TREATIES.

1 [illegible] territory in Bom- [illegible]

phry Cook with the Viceroy of Goa was entered into without authorization by the Crown of England or the Crown of Portugal, was not ratified by either, was expressly repudiated by the former, and never was of any force. *Dond de Silveira v. Texeira, 2 Mor. Dig., 250,* observed upon. NAOROJI BERAMJI *v.* ROGERS . . . 4 Bom., O. C., 1

2. ——— Cession of Bombay and Salsette [illegible] made between Sultan [illegible] Portugal on [illegible] (includ- [illegible] referred to. SECRETARY OF STATE IN COUNCIL *v.* BOMBAY LANDING AND SHIPPING COMPANY [5 Bom., O. C., 23

See LOPEZ *v.* LOPEZ . 5 Bom., O. C., 172

TREATY, CONSTRUCTION OF—

——— Money settled upon members of Royal Family of Oudh and their heirs—*Perpetual pensions by payments arranged between sovereign powers—Construction of the word "issue," as*

[L R., 16 I. A., 175

TREES.

See BOMBAY REVENUE JURISDICTION ACT, s 4 I. L. R., 18 Bom, 319

See CASES UNDER LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND

See LIMITATION ACT, 1877, s. 28 (1871, s. 29) I. L. R., 3 All, 435

See LIMITATION ACT, ART. 144—IMMOVEABLE PROPERTY . 2 Agra, 300
[4 N. W., 167
I. L. R., 16 Bom., 353
I. L. R., 19 Bom., 207

See OWNERSHIP, PRESUMPTION OF.
[22 W. R., 405
I. L. R, 16 Bom., 547

See PRESCRIPTION—EASEMENTS—TREES
[I. L. R., 19 Bom., 420

See SMALL CAUSE COURT, MOFUSSIL—JU-

L. R., 5 All., 466

TREES—*continued.*

——— Document giving right to cut and enjoy

See REGISTRATION ACT, 1877 s. 17, cl. (*d*).
[I. L. R., 20 Mad., 58

——— Liability for cutting—

See MASTER AND SERVANT
[I. L R., 23 Calc., 922

——— Order to cut down—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . . 5 B. L. R., 131

——— Removal of, Suit for.

I. L. R., 5 All., 55
I L R., 20 All, 519

See LIMITATION ACT, 1877, ART 32
[I L R., 8 All, 448
I. L. R., 10 All., 634
I. L. R. 20 All., 519
I. L R, 24 Calc., 160

——— Restriction as to felling—

See MADRAS RENT RECOVERY ACT, s. 11.
[I. L. R., 15 Mad, 47

——— Right to cut—

See FOREST ACT, ss 75 AND 76
[I L. R, 18 Bom., 670
I. L. R., 23 Bom., 518

See GRANT—CONSTRUCTION OF GRANTS
[I L R, 23 Bom., 518

See PRESCRIPTION—EASEMENTS—TREES
[I L R., 19 Bom., 420

1. ——— Standing timber—*Mango tree—Custom of a locality—Registration Act (XX of 1866), s. 3.*—By the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses A mango tree, which is primarily a fruit tree, might not always come *within the term "standing timber" used in the* definition of immoveable property in s 3 of the Indian Registration Act (XX of 1866) But it may be classed as a timber tree where according to the custom of a locality its wood is used in building houses KRISHNARAO *v* BABAJI
[I. L. R, 24 Bom., 31

2. ——— *which trees*
Held per D
judgment of

TREES—*concluded.*

time be entitled to impose and subject also to all other lawful incidents attaching to a holding of that description. The rights of a tree-pottahdar and the nature of the revenue levied on such pottahdars considered. THEIVU PANDITHAN *v.* SECRETARY OF STATE FOR INDIA . . I. L. R., 21 Mad., 433

TRESPASS.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s 2. I. L. R., 21 Calc., 528

See CIVIL PROCEDURE CODE, 1882, s 244—QUESTIONS IN EXECUTION OF DECREE. [3 B L. R., A. C., 413 12 B. L. R., 208 note

See CIVIL PROCEDURE CODE, 1882, s 424. [I. L. R., 24 Calc, 584

See CONVERSION I. L. R, 22 Mad., 197

See CASES UNDER CRIMINAL TRESPASS

See DAMAGES—SUITS FOR DAMAGES—TORTS . . 8 Bom, A. C., 177 [7 N. W., 47 25 W. R., 548 I. L. R., 13 All., 98 I. L. R., 10 All, 198

See DEBTOR AND CREDITOR. [2 Ind. Jur., O. S, 7

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION. [3 B. L. R., A. C., 413 12 B. L. R., 208 note

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 22 All., 449

See MADRAS FOREST ACT, s. 21. [I. L. R., 12 Mad., 226

See MADRAS POLICE ACT, s. 21. [I. L. R., 17 Mad., 37

See MASTER AND SERVANT. [2 B. L. R., A. C., 227 2 B. L. R., O. C., 140

See MISJOINDER OF PARTIES [I. L. R., 19 Mad., 335

See RAILWAYS ACT, 1871, s. 2. [I. L. R., 1 Bom., 25

See RECORDER OF MOULMEIN. [6 W. R., Civ. Ref., 4

See RECORDER OF RANGOON [I. L. R., 20 Calc., 689

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY. [I. L. R., 18 All., 153

See RIOTING . I. L. R., 6 Mad., 245 [10 C. L. R., 278 W. R., 1864, Cr., 21

TRESPASS—*continued.*

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TRESPASS.

See WRONGFUL DISTRAINT. [5 W. R., Act X, 67 3 B. L. R., A. C., 261

——— by cattle.

See CATTLE TRESPASS, AND CATTLE TRESPASS ACTS.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 2 P, I. R., A. Cr, 45 [9 B. L. R., Ap, 38

——— on burial ground.

See RELIGION, OFFENCES RELATING TO [I. L. R., 10 Mad., 126 I. L. R., 18 All., 395

1. GENERAL CASES.

1. ——— Landlord and tenant—*Damage to reversionary interests—Right of landlord to sue for damage—English law, Non-applicability* [illegible]

2. ——— Wrongful distraint of crops—*Distraint without notice—Penal Code, s. 79—Resistance to wrongful distraint.*—A zamindar was held to be justified in exercising his right of private distraint of crops, if he had served the defaulters with written notices under Act X of 1859, s. 116, and, in such a case, raiyats, who knowingly resisted [illegible]

[illegible]

ment without the observance of the formality required by Regulation I of 1825. *Held* that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession JOYNARAIN BOSE *v.* COLLECTOR OF 24 PERGUNNAHS [Marsh., 56

COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE . . W. R., F. B., 18; 1 Hay, 122

4. ——— Suit to prevent trespass—*Suit to close doors—Cause of action—Possibility*

TRESPASS—*continued*

1. GENERAL CASES—*continued.*

[illegible]

trespass It will only lie when the opening of the doors is in itself such an irremediable injury that the plaintiff would not be sufficiently compensated by money damages GIBBON *v* ABDUR RAHMAN KHAN . 3 B. L. R., A. C., 411

5. ——— Sale for arrears of rent—*Sale under defective notice—Reversal of sale for irregularity—A*, a zamindar, sold the right of *B*, his patnidar, for arrears of rent under Regulation VIII of 1819 This sale was subsequently set aside at the suit of *B* for irregularity *A* then sued *B* for the arrears under Act X of 1859, and *B* pleaded limitation. *Held* that *A* was not guilty of a trespass in bringing the property to sale under a defective notice, and *A* could not have sued for arrears pending the proceedings to set aside the sale SWARNAMAYI *v* SHASHI MUKHI BARMANI [2 B. L. R., P. C., 10

S. C SURNOMOYEE *v* SHOSHEE MOKHEE BURMONIA . . . 12 Moore's I. A., 244 [11 W. R., P. C., 5

6 ——— *Suit for arrears of rent for a period during which zamindar had been* [illegible]

7. ——— Trespass on burial-ground—*Penal Code, s 297—Trespass by co-owner.—A, B, C*, and *D* were co-owners of a plot of land in which they were accustomed to bury their dead. *A* and *B* opened a saw pit close to the graves of *D*'s relatives, but did not disturb any of the graves. *Held* that

TRESPASS—*continued.*

1. GENERAL CASES—*concluded*

they were wrongly convicted under s. 297 of the Penal Code IN RE MUHAMMAD HAMIN KHAN [I. L. R., 3 Mad., 178

8. ——— Liability for trespass by defendants not actually committing it—*Committee under Act XX of 1863—Held*, in a suit under Act XX of 1863, that where the evidence showed that certain acts of trespass by one of the defendants were for the benefit and on behalf of the members of the committee, and were afterwards adopted and [illegible]

RIYAR . . . . . . 4 Mad., 410

2 HOUSE-TRESPASS

9. ——— Breaking open chest in house by inmate of house—*Penal Code, s. 457.—T*, being an inmate of his uncle's house, broke open a chest and took out property from it He was convicted of an offence under s 457 of the Penal Code. *Held* that he could not properly be convicted under that section. QUEEN *v.* TASUDUK HOSSEIN [6 N. W., 301

10. ——— Breaking open door in execution of decree—*Penal Code, s. 456.*—Where [illegible]

any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed. IN THE MATTER OF JOTHARAM DAVAY [I. L. R, 2 Mad, 30

11. ——— Cattle-yard—*Building used for custody of property—Penal Code, ss 442, 457.*—The Court inclined to hold that a cattle-yard which was originally walled on four sides, and in one side of which, fallen out of repair, there was a gap stopped with a thorn, was a building used as a place for the custody of property, within the meaning of s 442 of the Penal Code. QUEEN *v.* DULLEE [6 N. W., 307

12. ——— Entry into house with forged warrant of arrest—*Penal Code, s. 452* [illegible]

13. ——— Right of wife to enter husband's house—*Wife excommunicated from caste.*

TRESPASS—*concluded.*

2. HOUSE-TRESPASS—*concluded.*

—Excommunication from caste *per se* does not deprive a Hindu wife of her right of joint enjoyment of her husband's house, so as to make her a trespasser if she enters the house to claim maintenance. QUEEN v. MARIMUTTU . . I. L. R., 4 Mad., 243

14. Entering lock-up with intent to convey food to prisoner—*Penal Code, s. 442.*—Where a person entered into a havalat with intent to convey or attempt to convey food to a prisoner under trial, such act on his part did not amount to house-trespass within the meaning of s 442 of the Penal Code EMPRESS v. LALAI

[I. L. R., 2 All., 301

TRESPASSER.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION ON BUILDINGS

[I. L. R., 18 All., 361

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR I. L. R., 19 Mad., 145

See POSSESSION—NATURE OF POSSESSION.

[I. L. R., 15 Bom., 238

See TITLE—EVIDENCE AND PROOF OF TITLE.

[I. L. R., 19 Bom., 828

— Dispossession by—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P

[7 N W., 228, 257, 259, 318

I. L. R., 19 All., 34

See TRANSFER OF PROPERTY ACT, S. 68

[I. L. R., 19 All., 191

—— Effect of settlement with—

See SERVICE TENURE.

[I. L. R., 18 Bom., 22

—— Suit against—

See DECREE—FORM OF DECREE—TRESPASSER . 4 C. W. N., 105

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R., 1 All., 448

I. L. R., 16 All., 325

I. L. R., 19 All., 452

I. L. R., 20 All., 520

See LANDLORD AND TENANT—EJECTMENT —GENERALLY . I. L. R., 19 Bom., 138

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION

[I. L. R., 1 All., 518

I. L. R., 20 All., 208

See ONUS OF PROOF—EJECTMENT.

[I. L. R., 19 Bom., 803

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R., 18 Bom., 721

Suit by—

See SPECIFIC RELIEF ACT, s. 9

[I. L. R., 15 Bom., 685

TRESPASSER—*concluded.*

See WRONGFUL POSSESSION.

[I. L. R., 4 Calc., 586

"TRIAL," COMMENCEMENT OF—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 25 Calc., 863

TROVER.

See HUNDI—LIABILITY ON.

[I. L. R., 18 Bom., 570

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—TROVER.

[I. L. R., 12 Bom., 573

Suit in—

See HUSBAND AND WIFE.

[I. L. R., 1 Calc., 235

1. Right of stoppage in transitu —*Contract for goods free on board—Insolvency.*— Goods contracted to be sold and delivered "free on board," to be paid for by cash or bills at the option of [illegible] elected to pay for the goods by a bill, which the sellers having drawn, was duly accepted by the purchasers The sellers retained the mate's receipts for the goods, but the master signed the bill of lading in the purchasers' names, who, while the bill they accepted was running, became insolvent In such circumstances, held by the Privy Council (reversing the decision of the Supreme Court at Bombay) that trover would not lie for the goods, for that on their delivery [illegible] mate were not essential to the transaction between the seller and purchaser FRAMJEE COWASJEE v. THOMPSON . . . . 3 Moore's I. A., 422

2. Conversion—*Assignment of goods in certain warehouses on advances—Seizure of goods—Advance and assignment not simultaneous—Incomplete assignment.*—A bill of sale and assignment of goods described as being in certain warehouses belonging to *A* was given by him for the loan of a sum expressed to have been paid on the day of the date thereof. Upon an action of trover brought against the assignee of *A*, who had seized the goods, it appeared in evidence that a portion only of the goods was in the warehouse specified at the date of the sale, and that no part of the loan was paid on that day, the same being discharged by instalments a few days afterwards, whereupon the Judges of the Supreme Court held that there had been no valid transfer, and consequently no conversion, and gave an interlocutory judgment in accordance with such view. *Held* by the Judicial Committee on appeal from that decision,

TROVER—*concluded.*

and from an order refusing a new trial, that the decision was not justified by the evidence, and must be reversed and a new trial granted MUTTYLOLL SEAL *v.* O'DOWDA . 4 Moore's I. A., 382

3. ———— **Suit to recover notes lost by gambling**—*Act XXI of 1848—Illegal consideration—Bonâ fide holder for value—Trust for specific purpose*—The plaintiff, the manager of the Oriental Bank, placed in the hands of *D*, a broker,

reasonable rate than in the Calcutta market, if the

put forward by the plaintiff, the transaction was a

recover on behalf of the bank. BULDEO NARAIN *v* SCRYMGEOUR 6 B. L. R., 581

TRUST.

See DEED—CONSTRUCTION.
[I. L. R., 20 Bom., 310

See ECCLESIASTICAL TRUST
[2 Ind. Jur., O. S., 12

See ENGLISH LAW—TRUST, DECLARATION OF. 4 Mad., 460

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY
[I. L. R., 8 Mad., 266

See HINDU LAW—ENDOWMENT—CREATION OF ENDOWMENT.
[1 Ind. Jur., N. S., 14
14 B. L. R., Ap., 175
I. L. R., 9 Bom., 169
I. L. R., 4 Calc., 56
I. L. R., 12 Bom., 247
I. L. R., 10 All., 18
I. L. R., 25 Calc., 112

TRUST—*continued.*

See HINDU LAW—PARTITION—AGREEMENTS NOT TO PARTITION, ETC.
[I. L. R., 6 Calc., 106
I. L. R., 12 Mad., 287

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS AND REMOTENESS.

See JURISDICTION—SUIT FOR LAND—TRUSTS.

See CASES UNDER LIMITATION ACT, 1877, s. 10

See LIMITATION ACT, 1877, ART. 113 (1871, ART. 113) I. L. R., 2 Calc., 323

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 19 All., 277
[L. R., 24 I. A., 10

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 420
I. L. R., 9 Mad., 325
1 Ind. Jur., O. S., 86
I. L. R., 15 Mad., 424

———— Declaration of—

See STAMP ACT, 1879, SCH I, ART. 36.
[I. L. R., 12 Mad., 89

———— Deed of—

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 20 Bom., 511

See STAMP ACT, 1879, SCH. I, ART 54.
[I. L. R., 20 Bom., 210

———— Disavowal of—

See LIMITATION ACT, 1877, ART. 144 (1871, ART 145)—ADVERSE POSSESSION.
[I. L. R., 1 All., 403

———— for benefit of creditors

See BILL OF EXCHANGE
[I. L. R., 3 Calc., 174

See DEBTOR AND CREDITOR.
[11 Moore's I. A., 317
3 Agra, 104, 321
8 Bom., A. C., 245
1 Bom., 233
I. L. R., 7 Bom., 101
I. L. R., 25 Calc., 642
I. L. R., 16 Bom., 1
I. L. R., 19 Bom., 12
I. L. R., 20 Mad., 91

———— for specific purpose.

See LIMITATION ACT, 1877, s. 10 (1871, s. 10) . I. L. R., 4 Calc., 455, 897
[12 C. L. R., 370
I. L. R., 6 Mad., 402
I. L. R., 14 Bom., 476

See TROVER . . . 6 B. L. R., 581

TRUST—*continued.*

——— Giving power to sell land in mofussil.

See JURISDICTION—SUITS FOR LAND—TRUSTS

——— Instrument of—

See STAMP ACT, 1879, SCH. I. ART. 50. [I. L. R., 15 Mad., 386

——— Notice of—

See LIMITATION ACT, 1877 ART 134 (1871, ART. 134). . I. L. R., 1 Bom., 260

——— Precatory Trust—

See WILL—CONSTRUCTION.
[I. L. R., 2 All., 55
I. L. R., 4 All., 500
L. R., 9 I. A., 70
I. L. R., 15 Mad., 448

——— Revocation of—

See ONUS OF PROOF—TRUST, REVOCATION OF . 10 B. L. R., 19 [14 Moore's I. A., 289

——— Scheme of management for—

See ENDOWMENT . I. L. R., 21 Calc., 556

——— Suit relating to—

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

——— Suit to set aside—

See LIMITATION ACT, 1877, ART. 120. [I. L. R., 20 Bom., 511

1. ——— Creation of trust—*Owner of*

with his acts, shows a clear intention on his part

2. ——— *Subsequent dispo-*

particular members of a family, the individuals con-

TRUST—*continued.*

stituting which have, as a class, a beneficial interest in the whole, must be regarded not as gifts to them for creations of new trusts in their favour which he had no power to make, but as the acts of a trustee, and available only to the extent of the shares to which such persons may be entitled. But this applies only to dispositions out of the principal of the fund, and not to payments made out of its income to particular members of the family for their maintenance, or other expenses, as there may be circumstances which would render it inequitable to take an account of the latter, so as to charge such persons with what they may have received beyond their respective shares. JAMSETJI JIJIBHAI *v.* SONABAI [2 Bom., 130: 2nd Ed., 133

3. ——— *Invalid declaration of trust—Intended transfer of property—Incomplete gift—Evidence of interested parties*—The plaintiff, *H*, was the daughter of one *K*, deceased. *K* some two years before his death in 1866 contemplated conferring a bounty to the extent of R5 000 on each of his daughters, *M* and *H*. For *M* he bought a house at Zanzibar and settled it on her by a formal deed of settlement with various limitations. For *H*, too, he at first intended to buy a house; but finding houses in Bombay were too dear, he purchased a Government promissory note of the nominal value of R5 000. The note was purchased in his own name, and a separate account of it opened in his books, headed "The account of one promissory note bearing 5 per cent. interest." This account he debited with all expenses over and above the R5,000 incurred in and about the purchase of the note, such as for premium, carriage hire, etc., charging, moreover, 9 per cent. interest on these items of debit (which interest he carried as a gain to his general interest account), and he credited the account with the interest collected on the note from time to time, allowing interest at 6 per cent. on these items of credit. He kept also a separate account of the proceeds of the note, headed "The account of interest on one promissory note for R5 000." The plaintiff stated that on the day when the note was bought her father *K* brought it and showed it to her, saying, "This is your note; take it when you want it," and that she left it in his custody, saying, "I will take the note when my sons grow up and do business." Corroborative evidence

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er *K*'s
death his son recognized some claim in the plaintiff to the income of the sum of R5,000 set apart by *K*, and he paid her sums, equivalent to the proceeds of the note, with more or less regularity down to the date of his death. The note itself, however, he sold
the sale, al-
erest on the
H's name.

TRUST—*continued*

Later still, after the death of K's son, his grandsons, the defendants, made similar payments for

tion, they were insufficient of themselves to establish such a trust; while the oral testimony—which, if taken together and accepted as reliable, might well suffice to establish the acknowledgment of a trust—contained such discrepancies and was so generally misty and uncertain in character that it ought not to be accepted unless corroborated by undisputed facts in the case incapable of being explained except on the hypothesis advanced by the plaintiff. *Per* SARGENT, C J—The equitable doctrine of the transfer c
when it
requires
greatest
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conversations which took place seventeen years ago without the corroboration derived from other evidence pointing irresistibly in the same direction would be

failed to give effect—being clear HIRBAI *v*. JAN MAHOMED KHALAKDINA I. L. R., 7 Bom., 229

4. —— *Gift—Requisites to complete gift—Donor constituting himself trustee for donee—Enforcement of trust by representative of donee—Trustee, Liability of.*—

endorsed in the name of the said *B*, and had been deposited b
father *J*,
time to tin
draw the
1864, and that after his death the defendant, who was his widow and executrix, used to draw the interest for *M*, that in 1869 she obtained possession of the said notes, and had ever since continued in

which she refused to do. The defendant denied

TRUST—*continued*.

that her husband *B* had ever presented *M* with Government notes for her separate use She alleged that the notes which had been deposited by *B* with *J* were her own separate property, and not *M's*; that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs, or either of them, or for their benefit. She further stated that some of the notes which had been deposited with *J* had been disposed of by *B* in his lifetime with her consent, that in 1869 she
sold them,
benefit. At
occasion of
made to *M*
both by her own family and by that of the bridegroom *B* Two accounts were then opened in the books of

credited to her Other documents were produced, proved to be in the handwriting of *B* and *J*, in which the said Government notes were alluded to as the property of *M*, and as having been purchased with her moneys In 1864 *B* died without having endorsed the notes over to *M* or to any one in her behalf, and they remained in his name in the hands of *J* until 1869, when the defendant got possession

it was his intention that the property should be enjoyed in sole and separate use by *M* and her children. MERBAI *v*. PEROZEBAI

[I. L. R., 5 Bom., 268

5. —— *Parol trust—Trustee—Executor de son tort—Donatio mortis causâ—Appeal as to costs—Limitation.*—One T C

TRUST—*continued.*

brother of *T C*, and himself, the sum of R7,273-1 alleged to have been owing by *T C* to *L*. In a suit by the son of *T C* for an account the Assistant Registrar found (*inter alia*) in his report that R1,975 had been paid to *S* by the defendant, and that the balance R5,298-1 had been taken over by the defendant by arrangement with *S* (the first payment being time barred). *Held* that a good trust in favour of *S* for the whole debt due to her was created in respect of the moneys which reached the defendant's hands applicable under the terms of the mandate to him for the payment of her claim, that no question arose as to limitation, and that it was unnecessary to consider whether the defendant, if acting as an executor *de son tort*, had power to pay it though barred. *Held* also that the trust was not in the nature of a testamentary disposition, though it was created in anticipation of death, and could not after the death of *T C* be recalled by his representatives. *Peckham* v. *Taylor*, *31 Bear*, 259, followed. *Quære*—Whether as to the application of the surplus after payment of the specified debts the defendant was in the position of an executor *de son tort*, and that practically it may in some cases be difficult to avoid the application to Hindus of the principles upon which executorship *de son tort* rests. *Jogender Narain Deb Roykut* v. *Temple*, *2 Ind Jur*, *N S*, *234*, referred to. *Semble*—That even upon the findings of the lower Court the order as to costs would have to be altered materially in favour of the defendant. SUDDASOOK KOOTARY *v.* RAMCHUNDER

[I. L. R., 17 Calc., 620

6. ——————— *Trust created for specific purpose—Surplus after performance of trust*.—Where a trust had been created for specific purposes, *viz.*, the performance of religious and other duties, and the trustee had duly appointed

[illegible]

portion of the corpus of the estate be taken out of the hands of the trustee on the ground that there was, or might be, a margin of profit coming to him personally after the performance of the trusts. *Held* also that in a suit in which all the parties interested were not before the Court there could be no decision as to the extent of the trusts nor as to whether any surplus profits of the trust estate would, or

[illegible]

[I. L. R., 10 I. A., 1

7. ——————— *Improvements of estate—Rights of tenant for life and remainderman as to sums expended*.—A testator conveyed his property which consisted of extensive coffee estates to trustees upon trust as to part thereof for certain persons for life and then upon trust for their children absolutely. A suit having been filed for the administration of the trusts of the will, a receiver was appointed. On the application of the receiver, and with the consent of all parties, the Court sanctioned the extension of the estate. This was done by raising a loan on pledge of the profits of the estate, out of which, when realized, the loan was paid off. By the will, the trustees were em-

[illegible]

The tenants for life claimed that the sum expended be declared a charge on the estate. *Held* that the extension was within the powers of the trustees, but that, as between the life-tenants and the remainder men, the former were entitled to have the sums expended on the improvements charged on the corpus, they keeping down the interest. OUCHTERLONY *v.* OUCHTERLONY . I. L. R., 11 Mad., 380

8. ——————— *Application by trustees to raise money by mortgage of trust-property—Sanction of Court*.—A testator by his will devised property in Bombay to trustees on certain religious and charitable trusts. The income of the property was more than was required for the purposes of the trust, and the trustees had a surplus of R19,000 in their hands. They were obliged to pull down a certain chawl which stood upon the land for

[illegible]

further sum of R40,000 was necessary. This they

[illegible]

v. NOWROJI NASARWANJI BODE

[I. L. R., 20 Bom., 46

[illegible]

rightful possession of the lands, but impressed with the obligation of a trust; that in a suit such as last

[illegible]

10. ——————— Recognition of trust—*Deed* [illegible]

[illegible]

of his nephew. Settlement was made with the senior widow after the mutiny, a sanad granted to

[illegible]

TRUST—*continued.*

Held in a suit by the widow next in order that such senior widow had undertaken the trust of carrying out the provisions of the will, and that a deed of gift made by her transferred only her interest, which was an estate for life. RAMANUND KUAR *v.* RAGHUNATH KUAR ANUNT BAHADUR SINGH *v.* RAGHUNATH KUAR

[I. L. R., 8 Calc., 769 · 11 C. L. R., 149 L. R., 9 I. A., 41

11. ———— Cessation of trust—*Cessation of performance by congregation of particular form of worship—Commencement of different form of worship*—If the congregation of a church as a body cease to follow the observances of a particular form of worship, and in preference for forty years follow those of a different form of worship, there would be no one left for whom and by whom the

MELLUS *v.* VICAR APOSTOLIC OF MALABAR

[I. L. R., 2 Mad., 295

12. ———— Suit to enforce trust—*Suit for enforcing religious or charitable trusts—Right of suit—Pleading—Security for costs*—The representatives of a testator who has created trusts for religious or charitable purposes, in which the repre-

the Attorney General in England A suit for this purpose should not be admitted unless the plaintiff gives sufficient security for costs In order that a decree for an account may be made in favour of the plaintiff in such a suit, he must allege substantially in his plaint that which must be a distinct breach of trust, it is not sufficient for him to make out a case of mere suspicion, or to rely on particular passages in the defendant's written statement BHOJOMOHUN DOSS *v.* HURROLOLL DOSS I. L. R., 5 Calc., 700

13. ———— Religious and charitable trust—*Mortgage of trust property—Right of*

person, other than the duly authorized trustee, can

success on G claimed to succeed as *D*'s adopted son. *C* denied the adoption and claimed as *D*'s heir and nearest kinsman *C* obtained a decree against

TRUST—*continued.*

sought to execute this decree, but was successfully resisted by *C*, who had already got possession under his decree Pending this litigation, the widow of *D*, the deceased trustee, who was *de facto* manager, mortgaged two villages forming part of the devasthan property. To pay off this mortgage, *G* mortgaged the villages to the plaintiff in 1875 The mortgagee sought to take possession of the villages, but he was resisted by *C*. Thereupon *G* filed a suit, *in formâ pauperis*, against *C* to recover possession

14. ———— Assignment of religious trust—*Delegation of trust—Appointment by trustee of an agent for nine years.*—A person hold-

the trust. KRISHNAMACHARLU *v.* RANGACHARLU

[I. L. R., 16 Mad., 73

15. ———— Charitable trust—*Will—*

Advocate-General, Right of—Decree in prior suit brought by trustees of charity—Civil Procedure Code (1882), s. 43.—One *B R*, a Jain, died in February 1863, leaving a will His widow *P* (defendant No 1) obtained letters of administration with the will annexed The testator died possessed (*inter alia*) of a half share of certain property in Bombay known as the "Bhimpura property." The remaining half share belonged to two other persons, *viz*, *H D*

TRUST—*continued.*

and *M T.* By his will the testator directed that a moiety of the rental of his half share should be spent on the sadharm (charitable or religious) endowment of a temple at Jackho in Cutch, and the other moiety thereof in establishing two sadavarats, one at Jackho and the other in Palitana He also set apart a sum of R1 26,000, of which R1,01,000 were to be expended in building a temple at Jackho, and the balance of R25,000 in erecting a market near the temple at Jackho, or, if that was impossible, it was to be spent in Palitana. The plaint complained that of the R1,26 000 about R60,000 had been spent in buying a property in Bombay, called the "school property," for the purpose of establishing a school there, and about R50,000 had been expended in erecting a temple at Jackho, but that nothing had been done with the balance, nor had a market been established at Jackho. All that had been done there was to erect three shops which cost about R2 000

were to apply one moiety of the net rents (1) in sadavarat or alms-giving at Jackho and Palitana; (2) in feasting the caste people in Bombay and Jackho annually, (3) in the worship called satarbhadi at the derasar (temple) in Bombay and Jackho, and (4) in entertaining and clothing the gorib (poor) in Bombay and Jackho Of the remaining moiety of the rents (5) one-half was to go to sadharm (charities) of the derasar (temple) at Jackho, and (6) the other half to charities at such places as the trustees should think fit In the following year, *viz.*, on the 17th April 1869, *P* (defendant No. 1) and the owners of the other moiety of the "Bhimpura property" conveyed the whole of that property to trustees, who were to apply a moiety of the rents (which was to be considered as rent from *P*'s share of the property) (1) in sadavarat and alms-giving at Jackho and Palitana, (2) in feasting the caste people in Bombay and Jackho annually on the anniversary of *B R*'s death, (3) in the worship of the derasar called satarbhadi, and in the entertainment and clothing of the gorib (poor) in Bombay and Jackho. The deed also directed the application of the rents of the other moiety of the "Bhimpura property," part of which was to go to a temple at Tera in Cutch and part to another temple at Jackho This later deed, it will be

did not recite or in any way refer to the first. At the date of suit all the trustees named in the deeds were dead except the second defendant By subsequent deeds, however, new trustees had been appointed and they were all parties to the present suit. Defendants Nos 2, 3, 4, 5, 6, and 7 were trustees of the Bhimpura property, and defendants Nos 8, 9, 10, and 11 of the school property. The plaint filed on

TRUST—*continued.*

the 10th March 1892, at the relation of two members of the Jain community of Cutch, prayed that the charitable trusts of the testator's will might be carried out, and sought for accounts against the widow of the testator and the trustees of both the deeds, and for a scheme, etc. *Held* that the High Court of Bombay had jurisdiction to make a decree declaring, the trusts upon which the trustees of the deed of

further in settling a scheme. *Semble* — ... money is bequeathed for the purpose of founding a charity outside the jurisdiction, the Court hands the money to the trustees named by the testator, leaving it to the Courts of the country in which the charity is to be established to settle the scheme *Held* also that the suit was not barred by limitation. It was not one for rectification of the deed of 1868, but rather one against *P* (defendant No. 1) and her ... and 1869, ... property in ... the proper purposes of the trust, and therefore came within s 10 of the Limitation Act (XV of 1877). Charges of fraud and dishonesty made against trustees of a charity must be established at the hearing of the case, and cannot be allowed to be reserved and proved subsequently in the course of taking accounts. Where the trust-deed of a charity, executed subsequently to the death of a testator under whose will the charity was established, does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the mistake upon the trustees. The plaintiff in this suit demanded an account from *P* of the Bhimpura property from the testator's death to the execution of the deed of the 13th October 1868, and of the school-house property from the date of its purchase to the same ... the trustees of the ... the ... *Held* ... *P.* ... to trustees in 1868. There was no evidence that she had ever used any of the income for her own purposes, and the presumption was that she had faithfully discharged her duty The account was probably barred by art. 120 of the Limitation Act (XV of 1877) The trustees of the deed of 1869 had paid over the income received by them to the ... who were entitled ... would be ... er prayed ... of *R B*, ... 68, from the date of its execution to his death in 1883 Under a decree passed in a previous suit (No. 113 of 1889), dated the 10th August 1893, brought by the trustees, they had received from *R B*'s estate the balance which in that suit they had claimed to be due from him to the charity. In that suit the trustees had not asked for an account against him. *Held* that the Advocate-General as plaintiff in the

TRUST—*continued.*

present suit was barred by the decree in that suit under s 43 of the Civil Procedure Code (Act XIV of 1882) The trustees, having then omitted to ask for an account, could not sue again. The Advocate-General represented the same interests as they did, and was therefore equally bound. Even, however, if that were not the case, the Court in the exercise of its discretion would not direct the account asked for. ADVOCATE-GENERAL OF BOMBAY *v.* BAI PUNJABAI . . I. L. R., 18 Bom., 551

16. ——— — Transfer of property on trust—*Transfer of property by convict sentenced to transportation.*—*B*, having been sentenced to transportation for life, presented a petition in the Revenue Court, in which, stating that he owned a certain zamindari estate, that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue registers, and that of *P* be recorded in its stead. *Held* that the transfer of the property by *B* to *P* was in the nature of a trust. *Durga Prasad* v *Asa Ram, I L R, 2 All, 361,* referred to. HAIT RAM *v* DURGA PRASAD I. L. R., 5 All., 609

17. — — Property held on trust—*Assignment by trustees—Limitation* —In 1870 the purchasers and recorded proprietors of a four-biswas

[illegible]

revenue due on such share In 1843 *H* purchased such share and became its recorded proprietor. In

[illegible]

signers in trust to surrender it to *B* or his heirs on payment of a moiety of the sum they had paid on

[illegible]

KAMAL SINGH *v* BATUL FATIMA

[I. L. R., 2 All., 460

18. ——— — — *Holder of missing person's estate—Possession* —The possession by

[illegible]

19. ——————— *Absconding shareholder—Custom for his share to be considered as held in trust*

[illegible]

TRUST—*continued.*

[illegible]

trust for him for twelve years only. *Held* that, as the father of the plaintiffs did not reclaim his share within twelve years, the plaintiffs' right was forfeited. NAHANA *v.* DYA RAM . . . 5 N. W., 170

20 ——————— — *Wajib-ul-urz—Absconding co-sharer* —Where a clause of the wajib-ul-urz of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from such village before such wajib-ul-urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to such wajib-ul-urz, alleging that their property had vested in such co-sharer in trust for them,—*Held* that, before such co-sharer could be taken to have held their property as a trustee, there must be evidence that he accepted such trust, and this fact could not be taken as proved by the wajib-ul-urz. PIAREY LAL *v.* SALIGA

[I. L. R., 2 All., 394

[illegible]

did not contain any declaration of a trust as existing between such absent shareholders and the occupiers of their lands at the time such administration-paper was framed,—*Held* that the administration-paper could not be regarded as evidence of a pre-existing trust between such persons, nor as an admission of such a trust by such occupiers HARBHAI *v.* GUMANI . . . . I. L. R., 2 All., 493

22. ——————— *Absent co-sharer*

[illegible]

S and (his brother) went away into Orai; then

[illegible]

TRUST—*continued.*

annas of our own eight annas to *P*, and have given him possession of 4 annas of the 8 annas belonging to *S* and (his brother), keeping the remaining 4 annas in our own possession: when *S* and (his brother) return to the village, we three who are in possession shall give up the 8 annas share of the aforesaid persons." In March 1880 *S* sued *P* for possession of the 4 annas mentioned in the wajib-ul-urz as having been made over to him by *H* and *D* out of the 8 annas share belonging to *S* and his brother. He based his suit upon the wajib-ul-urz, but did not expressly state that the share in suit had been entrusted to *H* and *D* on the understanding

1867, more than twelve years before the institution of the suit, when *S*, having returned to the village, had claimed the share and *P* had refused to surrender it. On second appeal it was contended by *S* that under the terms of the wajib-ul-urz *P*'s possession was that of a trustee, and his possession could not be held to be adverse. *Per* SPANKIE, *J.*—That inasmuch as there was no direct evidence that the share in suit had been entrusted by *S* to *H* and *D* on the understanding that it should be returned to him when he reclaimed it, and as such a trust could not be implied from the terms of the wajib-ul-urz, which amounted to nothing more than an acknowledgment of *S*'s title and an offer to surrender possession when he returned, and as when he did return in 1866 or 1867 *P* refused to surrender possession, *S* was bound to have sued to recover the share in suit within twelve years from the date of such refusal, and as he had failed to do so, the suit was barred by limitation. *Per* PEARSON, *J.*—That although no mention was made in the wajib-ul-urz of such a trust as was contended for, yet the terms of that document strongly suggested the creation of such a trust. Having regard to the terms of the wajib-ul-urz, and to the fact that *S* and his brother were not strangers to *H* and *D*, nor merely co-sharers, but near blood-relations, probably residing together on the same premises and partners in agricultural labours, further inquiry should be made with the view of elucidating the nature of the acquisition of *H* and *D* of the share and of their subsequent possession. SIRDAR SAINEY *v.* PIRAN SINGH . I. L. R., 3 All., 453

by reason of the retirement of two out of three trustees, and of the inability of the third to discharge his duties properly. BAUMGARTNER *v.* STEPHENSON

[3 Agra, 321

24. ——— Creditor's trust-fund—*Unclaimed dividends, Suit for distribution of.*—Where a creditor's trust-deed contained no provision for redistribution of unclaimed dividends, and a suit was brought by the representatives of one of the creditors, party to the deed, for the administration and distribution of funds in the defendant's possession allotted to other creditors by way of dividends, but unclaimed by them for forty years,—*Held* that the plaintiff was not entitled to such relief. *Wilde v. Banning, L. R., 2 Eq., 577*, distinguished. MANICKAVELU MUDALI *v.* ARBUTHNOT & Co.

[I. L. R., 4 Mad., 404

25. ——— Resulting trust—*Intention of party—Implied trust, Presumption of.*—Suit

was that the property had been purchased with money

met by the facts. AMEEROONNISSA KHANUM *v.* ASHRUFFOONNISSA

[17 W. R., 259: 14 Moore's I. A., 433

26. ——— *Statute of Frauds—Stat. 29 Car. II, c. 3.*—The plaintiff, who was

in writing some other trust which was to supersede the resulting trust in his own favour.

[I. L. R., 6 Bom., 263

TRUST—*concluded.*

27. ——— Breach of trust—*Parties—Defaulting trustees—Breach of trust beneficial to trust-estate.*—The Court will not, at the instance of

strued as an assent to a breach of trust already committed, even though the breach may have been beneficial to the trust-estate BARRY *v.* STEEL

[1 C. L. R., 80

28 ——— Revocation of trust—*Voluntary settlement* —*A*, being at the time unmarried, executed a voluntary settlement by which he created trusts for himself for life and after his death for his issue and widows (if any), with ultimate trusts over The deed contained a provision empowering *A* at any time, with the consent of the trustee, to revoke the trusts and to declare any new or other trusts. *A* subsequently married, and after his marriage exe-

present case, there being an infant beneficiary, the deed could not be revoked GOLAM YASSIN *v.* OFFICIAL TRUSTEE OF BENGAL

[I. L. R., 8 Calc., 887

TRUST-PROPERTY.

See COURT FEES ACT, 1870, s. 19D
[I. L. R., 23 Calc., 980

See COURT FEES ACT, 1870 SCH I, ART. 11 . 6 B. L. R., Ap., 138
[11 B. L. R., Ap., 39
7 B. L. R., 57
14 B. L. R., 184
I. L. R., 20 Calc., 575

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.
[I. L. R., 19 All., 428

TRUSTEE.

See COSTS—SPECIAL CASES—TRUSTEES
[13 B. L. R., 383
I. L. R., 11 Calc., 628

See COSTS—TAXATION OF COSTS
[I. L. R., 18 Bom., 189
I. L. R., 20 Bom., 301

See EXECUTOR I. L. R., 2 Bom., 388

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT 5 B. L. R., 181
[I. L. R., 7 Mad., 499

TRUSTEE—*continued.*

See HINDU LAW—ENDOWMENT—TRANSFER OF RIGHT OF WORSHIP.
[3 C. L. R., 112

See INSOLVENT ACT, s. 40
[I. L. R., 3 All., 799

See CASES UNDER LIMITATION ACT, 1877, s. 10 (1871, s. 10, 1859, s. 2).

See MAHOMEDAN LAW—ENDOWMENT
[I. L. R., 18 Bom., 401

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 2 Mad., 328
I. L. R., 1 Mad., 153

See OUDH ESTATES ACT
[I. L. R., 3 Calc., 522, 645
L. R., 4 I. A., 178
I. L. R., 26 Calc., 879

See PARTIES—PARTIES TO SUITS—DEBTOR AND CREDITOR, SUITS BETWEEN.
[3 Agra, 104
I. L. R., 3 All., 799

See CASES UNDER TRUST.

See CASES UNDER TRUSTS ACT.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.
[7 B. L. R., 113

See WILL—CONSTRUCTION.
[4 B. L. R., O. C., 53
I. L. R., 2 Calc., 45
I. L. R., 5 Calc., 228

——— Appointment of—

See ACT XX OF 1863.
[I. L. R., 3 Mad., 401
I. L. R., 17 Mad., 212
I. L. R., 19 Mad., 285

——— Appointment of, Prayer for—

See VALUATION OF SUIT—SUITS.
[I. L. R., 19 All., 60

——— Assignment of property to—

See DEBTOR AND CREDITOR.
[3 Agra, 104
I. L. R., 19 Bom., 12

——— Commission allowed to—

See WILL—CONSTRUCTION
[I. L. R., 24 Calc., 44

——— Constructive—

See ENDOWMENT.
[I. L. R., 23 Bom., 659

See INSOLVENCY—ORDER AND DISPOSITION . . I. L. R., 2 Bom., 542

——— Distinction between trustee and director.

See COMPANY—POWERS DUTIES, AND LIABILITIES OF DIRECTORS.
[6 B. L. R., 278

TRUSTEE—*continued.*

Nomination of—

See ENDOWMENT I. L. R., 18 All., 227

—— of temple.

See CASES UNDER ACT XX OF 1863

—— of temple, Breach of trust by—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [I. L. R., 1 Mad., 55

—— Right of, to sue.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE. [I. L. R., 20 Mad., 162 L. R., 24 I. A., 73

See DEBTOR AND CREDITOR. [I. L. R., 20 Mad., 91

Suit by—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS I. L. R., 1 Bom., 269

Suit by, to eject trespasser

See RIGHT OF SUIT — CHARITIES AND TRUSTS . I. L. R., 18 Bom., 721

—— Suit for removal of—

See ACT XX OF 1863, s 14 [I. L. R., 2 Mad., 197 I. L. R., 19 All., 104

See ENDOWMENT I. L. R., 18 All., 227 [I. L. R., 21 Bom., 556 I. L. R., 23 Bom., 659

See LIMITATION ACT, 1877, ART. 134. [I. L. R., 24 Calc., 418

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS

See VALUATION OF SUIT—SUITS. [I. L. R., 19 All., 104

1. —— Relinquishment by one trustee—*Effect of relinquishment.*—In a contest between three trustees or managers of an endowment, each entitled to a third share in the profits of the

KHODEJOONNISSA BIBEE *v.* LUTAFUT HOSSEIN [W. R., 1864, 171

2. —— Breach of trustees' duty—*Mixing trust funds with money of trustees—Commission on trust moneys.*—It is a grave breach of duty in trustees, or administrators taking out letters of administration, to estates in this country under powers of attorney from executors or next of kin abroad, to mix the incomes raised by them from trust properties, or the funds of the estate, in one common fund with their own moneys, and such a course of dealing may expose the trustees or administrators to criminal as well as civil liabilities. IN THE MATTER OF THE PETITION OF COWIE [I. L. R., 6 Calc., 70: 7 C. L. R., 19

3. —— Appointment of new trustees—*Probate—Executors—Executors alienating property of their testator's estate before obtaining probate—Title of alienees to such property—Right*

debentures obtained from executors before probate—

executors. At the time of his death A was holder of one moiety of the debentures, *viz*, 1,400 debentures of the value of R7,00,000. The two

to K's estate, among nominees for the purpose of voting at the meeting; and they also sold some of the debentures. Among the persons to whom debentures were sold were the first three plaintiffs. Pursuant to the notice convening the meeting, the plaintiffs and other persons, to whom debentures belonging to the estate of K had been given or sold, presented

put. The executors therefore withdrew the third meeting. After they had withdrawn, the date of defendant, P, was elected a trustee. At the date of

TRUSTEE—*continued*

the meeting the executors had not obtained probate of *K's* will. On behalf of the defendants it was contended that *P's* election was valid; and that the persons to whom the executors had given or sold debentures belonging to *K's* estate had been properly excluded from the meeting of the 17th February, inasmuch as the executors had not at that time obtained probate, and consequently the title of their alienees to the debentures was still incomplete. *Held* that *P* (defendant No. 3) had not been validly appointed a trustee to the indenture of the 23rd November 1883. Under that indenture, debenture-holders had the right to vote, and the debentures were payable to bearer. The fact that the executors had not at the date of the meeting obtained probate did not affect the rights of those to whom they had given or sold debentures, and such persons had consequently been improperly excluded from the meeting. MATHURADAS LOWJI *v.* GOCULDAS MADHOWJI

[I. L. R., 10 Bom., 468

4. ———— Breach of trust—*Liability of passive trustee.*—A trustee who, having accepted a trust, remains passive and takes no steps to see the trust carried into execution, is liable for losses arising from the breach of trust of his co-trustee. BAI JADAV *v.* TRIBHUVANDAS JAGJIVANDAS

[9 Bom., 333

5. ———— Fiduciary relationship—*Assignment by married woman.*—*L M* died in 1856, having bequeathed certain personal property to *J S*, who then and at the time of the subsequently-mentioned suit was a married woman, and who

made, and under it a portion of the legacy was assigned to trustees, who did not execute the deed or undertake the trust, and no other trustee was substituted for them. *O G & Co* at various times advanced money to *J S*, and in acknowledgment received promissory notes from her for a portion of such advances, and in a suit by *O G & Co.* to

the circumstances of the case and of her own position with regard to it. SMITH *v.* STEWART

[Bourke, O. C., 292

6. ———— Cause of action—*Adverse possession—Limitation.*—When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property and a refusal by the trustee to give up the property. The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession. RAKHALDAS MADAK *v.* MADHUSUDHAN MADAK

[3 B. L. R., A. C., 409: 12 W. R., 319

TRUSTEE—*concluded.*

7. ———— Suit to set aside alienations by trustee—*Bonâ fide purchasers.*—A suit brought

the commencement of the suit, elapsed since the execution of such deeds of alienation. *Held* (1) that this was not sufficient, and that the Court should have tried whether the purchasers were cognizant at the time of their purchase of a subsisting trust affecting the property, for if so, they would have taken it subject to the trust, and would stand in the shoes of the original trustee, and would not be *bonâ fide* purchasers from trustees entitled to the benefit

v. BEGO JAN. BEGO JAN *v.* CHERAG ALI

[5 W. R., 120

8. ———— Suit for mesne profits where estates had been under care of Court of

B, the ex-zamindar of Shivaganga. In 1856 they were purchased by the Court of Wards on behalf of *B*, who was then a minor, with part of the rents and profits of the zamindari, and in 1860 were given by him to his mother. In 1864 *B* was ousted by a decree of the Privy Council, and became liable to the present plaintiff for the mesne profits of the zamindari

amount

was ex

debited

TRUSTEE ACT.

———— (XXIV of 1841)—*Application for appointment of new trustees.*—Trustees were appointed for a company in 1845, and the partnership

TRUSTEE ACT—*continued.*

be made In the matter of Fort Gloucester Mills Co. . . . Bourke, O. C., 260

——— (XXVII of 1866), s 3—*Hindu trusts—Equitable jurisdiction of High Court—Appointment of new trustee—Supreme Court Charter, 1823.*—The High Court may exercise the summary powers conferred upon it by the Trustee Act (XXVII of 1866) in the case of Hindu trusts S. 3 of the Trustee Act, which provides that the power and authority given by the Act to the High Court shall be exercised only "in cases to which English law is applicable," cannot be intended to limit the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case on which an Act of the Indian Legislature has any bearing. The cases referred to in the section must be cases to which English law is in some measure applicable, but in what measure is not indicated in the Act. English law must be regarded as applicable in the sense intended if the principles recognized by the English Equity Courts are applicable At the date of the [illegible]

English law In this sense "English law was applicable" at the date of the passing of the Trustee Act of 1866 to all cases in which peculiarly equitable doctrines had obtained recognition in the relations between the native inhabitants of Bombay Those doctrines could not be employed to subvert the native substantive laws, but they afforded a means of ameliorating them by a system of rules borrowed from the English Court of Equity. Trusts are recognized in the Hindu as well as in the English system of law. But while the substantive Hindu law insists strongly on the suppression of fraud and the fulfilment of promises, it fails to furnish the detailed rules by which effect is to be given to its principles in cases of trust. If the Court is called on to give effect to a trust in any given case, it looks to the Hindu law of property to determine the estate of the trustee, but with reference to the [illegible]

arise. In re Kahandas Narrandas [I. L. R., 5 Bom., 154

——— ss 20 and 32—*Appointment of person to convey property on behalf of persons out of the jurisdiction and under other disabilities.*—Where property has been, by an order of Court, directed to be sold, and where some of the parties interested in such property are either out of the jurisdiction, married women, or minors, and the place of abode of others of them is unknown, the Court will, on petition, under the Trustee Act, appoint a person to convey the interest of such persons to any purchaser, notwithstanding that, at the time the order is applied for, no contract for the sale of the property has been entered into. But the Court cannot make such an order with respect to the interest of a party who has not been served, and who has not entered appearance. Lackersteen v. Rostan [I. L. R., 7 Calc., 32

——— s. 35—*Application for removal of trustee—Ground for removal—Stat. 13 & 14 Vict, c 60, s 32.*—Where a petition was presented to the High Court praying for the removal, under s. 35, Act XXVII of 1866, of certain trustees of a will, on the grounds *inter alia*, of misappropriation, [illegible]

Court of Chancery, to refuse juris[illegible] this section on a mere application alleging misconduct or any other cause, when the trustees whom it is sought to remove are willing to act and refer the applicant to a suit. In the goods of Powell [6 N. W., 54

TRUSTEES AND MORTGAGEES ACT.

——— (XXVIII of 1866), s. 43—*Admin*[illegible]

to express opinion.—The Administrator-General of Bombay [illegible] letters of administration [illegible]

him, the said *G B*, the balance in question, the said *G B* claiming to be the administrator of the domicile of the deceased, and, as such, to be entitled to all the personal assets of his estate wheresoever situate [illegible] whether he might safely [illegible]

not a question such as was contemplated by s 43 of the Trustees and Mortgagees Act, XXVIII of 1866, nor one upon which the Court ought to give any

TRUSTEES AND MORTGAGEES ACT —*concluded.*

opinion merely on an *ex-parte* petition of this character IN RE THE GOODS OF BRERETON IN THE MATTER OF THE TRUSTEES AND MORTGAGEES ACT, 1866 . I. L. R., 7 Bom., 381

— — — — *Powers of Court — Power to sanction lease.*—J S, a Hindu, died in 1865 possessed of a temple and of a piece of land near it which he bought in his lifetime. By his will he directed his executors to apply the income arising [illegible]

[illegible]

that a sum of R12,600 was urgently required for [illegible]

She therefore presented this petition to the Court [illegible]

that under the section the Court had no power to sanction the proposed lease or to advise as to whether the petitioner had power to grant it. The Court will not, under this section, advise trustees as to disputed points of law or fact, but will do so only as to undisputed matters of management, such as *questions of advancement, maintenance, change of* [illegible]

IN RE LAKSHMIBAI [illegible]

TRUSTS ACT (II OF 1882)

——— s 34—*Application for directions by trustees of charitable institution — Questions of detail and difficulty — Procedure* — The management of the Doveton charities is vested in a committee of management, who are empowered under the trust-deed to require the trustees of the funds of the charities to invest the trust-funds in excess of two lakhs of rupees "in the purchase or building of any

TRUSTS ACT (II OF 1882)—*continued.*

additional land, building, and premises" Certain buildings, having been erected under these provisions of the trust-deed, were now stated to be in urgent want of repair. The current income of the charities was not sufficient to meet the cost of carrying out the repairs, and the committee of management and the trustees were agreed that a sum of R8,700 in the hands [illegible]

shoul [illegible]

The [illegible]

the T [illegible]

whether this should be done *Held* that the question was not one with which the Court could deal under the Trusts Act, s 34 The Court (SUBRAMANIA AYYAR, J.) was of opinion that the proposed expenditure could, on the Court being satisfied of its necessity, be sanctioned, if the matter came before it in the form of a suit in its original jurisdiction, and that in the exercise of such jurisdiction the Court has power to deal with a case like this hardly admitted of doubt. IN RE MADRAS DOVETON TRUST FUND

[I. L. R., 18 Mad., 433

——— s. 49.

See ACT XX OF 1863.

[I. L. R., 17 Mad., 212

——— ss. 55, 60, 61.

See APPEAL—DECREES.

[I. L. R., 11 All., 131

——— s. 56.

See PARTIES—PARTIES TO SUITS—TRUSTS, SUITS RELATING TO.

[I. L. R., 23 Mad., 239

——— ss 63 and 64—*Trust not established.* —A claim made for a share of property by inheritance from a deceased relation who had been in joint

UNLAWFUL ASSEMBLY—*continued.*

the right to keep the river channel clear by preventing the construction of the bund and by de-

Mahto, 23 *W. R.*, *Cr.*, 25, and *Birjoo Singh* v. *Khub Lall*, 19 *W. R.*, *Cr.*, 66, referred to and commented on LANDI BI LAL DAS v. QUEEN-EMPRESS
[I. L. R., 16 Calc., 206

4. ——— Penal Code, ss. 141 and 154—*Owner of land on which unlawful assembly is held—Common object.—Held* that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together, inasmuch as they do not have "one common object" within the meaning of s 141 of the Penal Code. QUEEN *v.* SURROOP CHUNDER PAUL
[12 W. R., Cr., 75

5. ——— *Affray and unlawful assembly.*—There is no ground for the distinction between an unl...

become an unlawful assembly IN THE MATTER OF THE PETITION OF LOKENATH KAR
[18 W. R., Cr., 2

6. ——— *Maintenance of rights—Intention of parties.*—No charge of members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties

7 ——— *Person joining it*

KHUB LALL . . 19 W. R., Cr., 66

8 ——— *Raiyats carrying*

[4 Mad., Ap., 65

UNLAWFUL ASSEMBLY—*continued.*

9. ——— *Interrupting procession as a nuisance.—Held* that the act of

ance to them or their community. ANONYMOUS
[5 Mad., Ap., 6

10. ——— Penal Code, ss. 141, 143—*Assertion of right.*—One of two village factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse: this order having been neglected, the police prevailed on the other faction to abandon the procession.

[I. L. R., 14 Mad., 126

11. ——— Penal Code, s. 143—*Dispute as to possession of land—Assembly going with*

... was resisted by a body of men armed

... of an unlawful assembly.
Singh v.
...nguished.
PEARY MOHUN SIRCAR *v.* EMPRESS
[I. L. R., 9 Calc., 639

S. C. IN THE MATTER OF PEARY MOHUN SIRCAR
[13 C. L. R., 80

12. ——— Penal Code, ss. 143 and 353—

13. ——— Penal Code, s. 147—*Rioting—Abating nuisance.*—*A*, a joint owner of a parcel of land, erected on it an edifice without the consent of

UNLAWFUL ASSEMBLY—*continued.*

B, another joint owner. A dispute arose, and the Magistrate on inquiry ordered, under s 530 of the Criminal Procedure Code, 1872, *A* to be put in possession of the part of the land on which the edifice had been erected. *B* subsequently brought a suit in the Civil Court to establish his title to joint possession of the whole parcel, and for a declaration that *A* was not entitled to erect any edifice thereon, and he further prayed that such edifice should be removed *B* obtained a decree, whereupon his servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined On the 8th October the accused, who were the servants

bamboos On the 9th October 1877 these servants were charged before the Magistrate with rioting, and convicted under s 147, Penal Code *Held per* JACKSON, *J*, that, as the accused were not on the land in question as members of an unlawful assemly, nor for any unlawful purpose, the conviction, as well

S. C IN THE MATTER OF THE PETITION OF RAJCOOMAR SINGH . . . . 2 C. L. R., 62

14 ———— Penal Code, s 147 and s 105, cl. 4—*Mischief—Right of defence of property—Penal Code, s 105, cl 4*—Where land in the posses-

defence of private property had ceased under cl. 4, s 105 of the Penal Code QUEEN v RAJ KISTO DOSS . . . 12 W. R., Cr, 43

15.———— Penal Code, s 149—*Common object*

prosecution of that object QUEEN-EMPRESS v. BISHESHAR . . I. L. R., 9 All., 645

16 ——

ful assembly who struck the blows. QUEEN v. DUSHRUTH ROY . . . 7 W. R., Cr., 58

UNLAWFUL ASSEMBLY—*continued.*

17 ———— ———— *Riot in which man was killed—Culpable homicide.*—In a case of riot in which a man was killed, the whole of the

18. ———— *Constructive murder under s. 34, Penal Code—Effect on others charged under s. 149*—*Per* FIELD, *J*—Where a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s 149, so as to make other prisoners, by a double construction, guilty of murder. IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON. EMPRESS v JHUBBOO MAHTON

[I. L. R., 8 Calc., 739

S C JHUBBOO MAHTON v. EMPRESS

[12 C. L. R., 233

19. ———— *Common object.*—

[4 B. L. R., Ap, 47

S C. QUEEN v. GOLAM ARFIN

[13 W. R., Cr, 33

20. ———— Penal Code, ss. 149 and 300, except 2—*Common object—Murder*—One member of an unlawful assembly, whose common object was to eject certain persons from a piece of land, the title

rioting armed with a deadly meapon under s. 148. QUEEN v. SABED ALI

[11 B. L. R., F.B., 347 : 20 W. R., Cr., 5

21. ———— *Common object—Murder*—A large body of men belonging to one

22. ———— *Prosecution of common object.*—If a body of men armed with lathies

UNLAWFUL ASSEMBLY—*continued.*

20 *W. R., Cr.*, 5, cited. HARI SINGH *v.* EMPRESS [3 C. L. R., 49

23. ——— *Acts taking place after unlawful assembly is over.*—Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish-spear, it was held that the act was not one done with a view to

24. ——— Penal Code, ss. 151 and 188 —*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public

ing liable to conviction under the said section. An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X of 1872). EMPRESS *v.* TUCKER . . . I. L. R., 7 Bom., 42

25. ——— Penal Code (Act XLV of 1860), ss. 302, 304—*Good faith—Order of superior officer—Firing on an unlawful assembly.*

behalf of B, the servants of A went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The

UNLAWFUL ASSEMBLY—*continued.*

the constable, and that both he and the station-house officer were guilty of murder. QUEEN-EMPRESS *v.* SUBBA NAIK . . . I. L. R., 21 Mad., 249

26. ——— Penal Code, ss. 147, 148, 149, and 304—*Rioting armed with a deadly weapon—Common object of unlawful assembly,*

the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. SABIR *v.* QUEEN-EMPRESS [I. L. R., 22 Calc., 276

27. ——— Penal Code, s. 149—*Common object—Murder—Prosecution of common object.*—Neither of the cases of *Queen* v. *Sabed Ali*, 11 *B. L. R., F. B.*, 347 : 20 *W. R., Cr.*, 5, and *Hari Singh* v *Empress*, 3 *C. L. R.*, 49, lays down any hard and fast rule as to the circumstances under

Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is

UNLAWFUL ASSEMBLY—*concluded.*

different on different members of the same unlawful assembly. JABIRUDDIN *v.* QUEEN-EMPRESS [I. L. R., 22 Calc., 306

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE [I. L. R., 21 Calc., 103

——— Unlawful compulsory labour—*Criminal force—Slavery—Wrongful confinement—Penal Code (Act XLV of 1860), ss. 344, 352, 374*—The accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts. The complainants were to, and did in [illegible]

and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under ss 344, 370, and 374 of the Penal Code. On appeal the convictions under the two former sections were quashed, the evidence as to [illegible]

quashed,—*Held* (by PETHERAM, *C.J.*, and BEVERLEY, *J.*) that the conviction was erroneous and must be set aside. PETHERAM, C.J.—A person who insists [illegible]

UNLIQUIDATED DAMAGES.

See INSOLVENT ACT, s. 40 [13 B. L. R., Ap., 2

See INTEREST—MISCELLANEOUS CASES—UNLIQUIDATED DAMAGES [7 Bom., A. C., 89
9 Bom., 7

See SET-OFF—GENERAL CASES [17 W. R., 113
2 Mad., 296
3 Agra, 43, 97
22 W. R., 1
I. L. R., 4 Bom., 407
I. L. R., 11 Calc., 557
I. L. R., 7 All., 284

UNNATURAL OFFENCE.

——— Penal Code, s. 377—*Charge—Particulars as to time, place, and person—Criminal Procedure Code, 1882, s. 222.*—*Held* where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proof of these particulars, the facts proved against him only being that he habitually wore woman's clothes and exhibited physical signs of having committed the offence, that the conviction was not sustainable. QUEEN-EMPRESS *v.* KHAIRATI [I. L. R., 6 All., 204

UNPROFESSIONAL CONDUCT.

See CASES UNDER PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL

UNSEAWORTHINESS.

See CONTRACT—CONDITIONS—PRECEDENT. [2 B. L. R., O. C., 127

See DAMAGES—REMOTENESS OF DAMAGES. [6 B. L. R., Ap., 20

See INSURANCE—MARINE INSURANCE. [Cor., 5: 2 Hyde, 107
5 Moore's I. A., 361

UNSETTLED POLLIAM.

——— Hereditary tenure—*Evidence of possession or receipt of rent*—There is no long uniform current of decisions at Madras sufficient to show that every polliam, not permanently settled, is necessarily only a tenure for life, or at the will of the Government. Each case must depend upon its own particular circumstances. The existence of a proprietary estate therein, and the tenure by which it has been held, are matters judicially determinable on legal evidence. In India the proof of possession or [illegible]

proved that the estate has passed on one or more occasions from ancestor to heir. There is no difference in this respect between a polliam and an ordinary zamindari. OOLAGAPPA CHETTY *v.* ARBUTHNOT. COLLECTOR OF TRICHINOPOLY *v.* LEKAMANI. PEDDA AMANI *v.* ZAMINDAR OF MARUNGAPURI [14 B. L. R., 115: 21 W. R., 358
L. R., 1 I. A., 268, 282

S. C. in High Court. ARBUTHNOT *v.* OOLAGAPPA CHETTY . . . . . 5 Mad., 303

And LEKHAMANI *v.* RANGA KRISTNA MUTTA VIRA PUCHAYA NAIKAR . . 6 Mad., 208

UNSOUNDNESS OF MIND.

See INSANITY.

See LUNATIC.

UNLAWFUL ASSEMBLY—*continued.*

making a lawful resistance, the whole party may
pro he
Pen 7
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23. ———— *Acts taking place after unlawful assembly is over.*—Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish-spear, it was held that the act was not one done with a view to

24. ———— Penal Code, ss. 151 and 188—*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace,—*Held* that the gathering constituted an as-

order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a lawful order within the meaning of s 480 of the Code of Criminal Procedure (Act X of 1872). EMPRESS *v.* TUCKER . . . I. L. R., 7 Bom., 42

25. ———— Penal Code (Act XLV of 1860), ss. 302, 304—*Good faith—Order of superior officer—Firing on an unlawful assembly.*—*A* caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and *B*. Persons having proceeded to reap the crops on behalf of *B*, the servants of *A* went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air Some of the reapers remained and assumed a defiant attitude The

UNLAWFUL ASSEMBLY—*continued.*

the constable, and that both he and the station-house officer were guilty of murder. QUEEN-EMPRESS *v.* SUBBA NAIK . . I. L. R., 21 Mad., 249

26. ———— Penal Code, ss. 147, 148, 149, and 304—*Rioting armed with a deadly weapon—Common object of unlawful assembly.*

the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section SABIR *v.* QUEEN-EMPRESS [I. L. R., 22 Calc., 276

27. ———— Penal Code, s. 149—*Common object—Murder—Prosecution of common object*—Neither of the cases of *Queen* v. *Sabed Ali, 11 B L. R., F. B., 347; 20 W. R., Cr., 5,* and *Hari Singh* v. *Empress, 3 C. L. R., 49,* lays down any hard and fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another

should not, merely by reason of his association

that members of an unlawful assembly should lightly be let off from suffering the penalties for

knowledge possessed by each member of their common

UNLAWFUL ASSEMBLY—*concluded.*

different on different members of the same unlawful assembly. JAHIRUDDIN *v* QUEEN-EMPRESS
[I. L. R., 22 Calc., 306

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE.
[I. L. R., 21 Calc, 103

——— Unlawful compulsory labour—

they were prevented leaving the accused's premises, and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under ss 344, 370, and 374 of the Penal Code. On appeal the convictions under the

person to labour against his will within the meaning of s 374 of the Penal Code, because it is a thing

UNLIQUIDATED DAMAGES.

See INSOLVENT ACT, s 40.
[13 B. L. R., Ap, 2

See INTEREST—MISCELLANEOUS CASES—UNLIQUIDATED DAMAGES
[7 Bom., A. C., 89
9 Bom., 7

See SET-OFF—GENERAL CASES
[17 W. R., 113
2 Mad., 296
3 Agra, 43, 97
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I. L. R., 4 Bom., 407
I. L. R., 11 Calc., 557
I. L. R., 7 All., 284

UNNATURAL OFFENCE.

——— Penal Code, s. 377—*Charge—Particulars as to time, place, and person—Criminal Procedure Code, 1882, s. 222.—Held* where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proof of these particulars, the facts proved against him only being that he habitually wore woman's clothes and exhibited physical signs of having committed the offence, that the conviction was not sustainable. QUEEN-EMPRESS *v.* KHAIRATI
[I. L. R, 6 All., 204

UNPROFESSIONAL CONDUCT.

See CASES UNDER PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL

UNSEAWORTHINESS.

See CONTRACT—CONDITIONS—PRECEDENT
[2 B. L. R., O. C., 127

See DAMAGES—REMOTENESS OF DAMAGES.
[6 B. L. R., Ap., 20

See INSURANCE—MARINE INSURANCE.
[Cor., 5: 2 Hyde, 107
5 Moore's I. A., 361

UNSETTLED POLLIAM.

——— Hereditary tenure—*Evidence of*

Government. Each case must depend upon its own particular circumstances The existence of a proprietary estate therein, and the tenure by which it has been held, are matters judicially determinable on legal evidence. In India the proof of possession or receipt of rent by a person who pays the land revenue immediately to Government is *primâ facie* evidence of an estate of inheritance in the case of an ordinary zamindari. The evidence is still stronger if it be proved that the estate has passed on one or more occasions from ancestor to heir There is no difference in this respect between a polliam and an ordinary zamindari OOLAGAPPA CHETTY *v.* ARBUTHNOT. COLLECTOR OF TRICHINOPOLY *v.* LEKAMANI. PEDDA AMANI *v.* ZAMINDAR OF MARUNGAPURI
[14 B L. R., 115: 21 W. R., 358
L. R, 1 I. A., 268, 282

S C. in High Court. ARBUTHNOT *v.* OOLAGAPPA CHETTY . . . . . 5 Mad., 303

And LEKHAMANI *v* RANGA KRISTNA MUTTA VIRA PUCHAYA NAIKAR . . 6 Mad., 208

UNSOUNDNESS OF MIND.

See INSANITY.

See LUNATIC.

USER—*concluded.*

7. ——— *Letting house to tenant* —Where a right of user of a drain or passage is incidental to a house, that right is not affected by the owner of the house letting the house to a tenant. AMJUDEE BEGUM v. AHMED HOSSEIN [6 W. R., 314

8. ——— *Long uses by tenants of a plot of their landlord's land as a threshing floor—Conditions or contract of tenancy—Presumption.*—On evidence that a tenant has for a great number of years used a particular piece of the zamindar's land along with other tenants as a threshing floor, it is competent to the Court to find, there being no evidence to the contrary, that the right to use the plot of land for that purpose was part of the contract of tenancy *Udit Singh* v. *Kashi Ram, I. L. R., 14 All., 185,* distinguished. DALEL v. BHAJJU . . I. L. R., 16 All., 181

9. ——— *License to use land of another, coupled with grant — Revocation of license—Right of licensee to damages.*—A license to use the land of another, unless coupled with a grant, is revocable at the will of the licensor, subject to the right of the licensee to damages if it is revoked contrary to the terms of any express or implied contract *Wood* v. *Leadbitter, 13 M. and W., 838,* applied PROSONNA COOMAR SINGHA v RAM COOMAR GHOSE . . I. L. R., 16 Calc., 640

USUFRUCTUARY MORTGAGE.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R., 1 All., 524 [I. L. R., 11 Mad., 88

See CASES UNDER LEASE—ZUR I-PESHGI LEASE.

See LIMITATION ACT, 1877, s. 19 (1859, s 1, CL. 15) — ACKNOWLEDGMENT OF OTHER RIGHTS . 13 B. L. R., 177 [1 C. W. N., 513

See CASES UNDER MORTGAGE—POSSESSION UNDER MORTGAGE.

USURY.

See CASES UNDER BENGAL REGULATION XV OF 1793

See HINDU LAW—ALIENATION—ALIENATION BY FATHER. [I. L. R., 2 Calc., 213

See CASES UNDER HINDU LAW—USURY.

See CASES UNDER INTEREST — STIPULATIONS AMOUNTING OR NOT TO PENALTIES

See CASES UNDER MAHOMEDAN LAW—USURY.

UTBUNDI TENURE.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION. [20 W. R., 323 I. L. R., 17 Calc, 399

V

VACATION.

——— Closing of Court for—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING . 1 B. L. R., O. C., 39 [12 W. R., 293 I. L. R., 2 Calc., 128, 272

See CASES UNDER LIMITATION ACT, 1877, s 5 (1871, s 5).

——— of High Court.

See CIVIL PROCEDURE CODE, s 307. [I. L. R., 20 Bom., 745

VACCINATOR.

See PENAL CODE, s. 186 [I. L. R., 15 Mad, 93

VAKALATNAMA.

See CONTRACT ACT, s. 25. [I. L. R., 5 Bom., 258

See CASES UNDER PLEADER—APPOINTMENT AND APPEARANCE.

See PRISONER . . . 1 Bom., 16

See STAMP ACT, 1869, SCH. II, ART. 32. [I. L. R., 3 Calc., 767

VAKIL.

See PAUPER SUIT—SUITS 15 W. R., 198

See CASES UNDER PLEADER

See PRISONER . . . 6 Mad., 38

See STAMP ACT, 1879, SCH II, ART. 11. [I. L. R., 8 Mad., 14

——— Right of, to plead on Original Side of High Court.

See RULES OF HIGH COURT, MADRAS [I. L. R., 1 Mad., 24

VAKIL AND CLIENT.

See ATTORNEY AND CLIENT. [11 B. L. R., 60 note

See CONTRACT ACT, s. 25. [3 Agra, 286 3 N. W., 25 I. L. R., 2 Bom., 362 I. L. R., 5 Bom., 258

VALUATION OF APPEAL.

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—VALUATION OF APPEAL.

See CASES UNDER VALUATION OF SUIT—APPEALS.

VALUATION OF SUIT.

See Appeal—Acts—Court Fees Act. [I. L. R., 2 Bom., 145, 219

See Appeal to Privy Council—Cases in which Appeal lies or not—Valuation of Appeal

See Cases under Appellate Court—Rejection or Admission of Evidence admitted or rejected in Court below—Valuation of Suit.

See Costs—Special Cases—Valuation of Suit.

See Cases under Court Fees Act.

See Jurisdiction—Question of Jurisdiction—Wrong Exercise of Jurisdiction . . . 22 W. R., 301 [I. L. R., 8 Bom., 31

See Recorders Act, s. 27 [5 B. L. R., 305 8 B. L. R., Ap., 91

See Special or Second Appeal—Other Errors of Law or Procedure—Valuation of Suit.

1. SUITS

1. ———— Question of valuation—*Procedure*—Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial. Joytara Dassee *v.* Mahomed Mobaruck [I. L. R., 8 Calc., 975: 11 C. L. R., 399

2. ———— Computation of value—

Roy *v* Mohiny Mohun Dass [I. L. R., 5 Calc., 489: 4 C. L. R., 491

3. ———— *Valuation for purposes of jurisdiction.*—Questions of jurisdiction,

the purposes of appeal, and indeed throughout the litigation. Jag Lal *v.* Har Narain Singh [I. L. R., 10 All., 524

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

4. ———— *Valuation for purposes of jurisdiction—Court Fees Acts*—The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. Dayachand *v.* Hemchand Dharamchand [I. L. R., 4 Bom., 515

5. ———— *Jurisdiction of Munsif—Mad. Regs. VI of 1816, s. 11, and III of*

Yadu *v.* Junjla Kamammah . 6 Mad., 151

6. ———— *Court Fees Act,*

to valuation for the purpose of ... amount of any fee chargeable does not affect a question as to the class of suits in which a particular suit ranks. Annamalai Chetti *v.* Cloete [I. L. R., 4 Mad., 204

7. ———— *Court Fees Act,*

under a wrong article in the schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh* v. *Gunga Pershad, I. L. R., 6 Calc.,* 249: *6 C. L. R.,* 567. Omrao Mirza *v.* Jones [12 C. L. R., 148

Singh *v.* Topanee Singh [12 B. L. R., 113: 20 W. R., 33

Jeebraj Singh *v.* Inderjeet Mahtoon [12 B. L. R., 115 note: 18 W. R., 109

Chunder Nath Bhuttacharjee *v.* Brindabun Shaha . . . 25 W. R., 39

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

KALU BIN BHIWAJI *v.* VISHRAM MAWAJI [I. L. R., 1 Bom., 543

BAI MANKOR *v.* BULAKHI CHAKU [I. L. R., 1 Bom., 538

9. ———— *Market value—Valuation for stamp purposes.*—Where a Court is satisfied that the market value of the subject of a

arrived at by the computation for the purposes of ascertaining the stamp duty where the Stamp Act prescribes arbitrary principles of calculation; but where it is asserted and shown, to the satisfaction of the Court, that the market value is in excess of the amount computed for such purposes, the Court must take notice of the actual market value. DHUNNOO *v.* DAMODUR DOSS . . 2 N W., 177

10. ———— *Cases in which revenue cannot be calculated—Market value.*—In cases where, for the purpose of the stamp on an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market value and the date on which it has been calculated. If the Registrar consider the estimate clearly insufficient, the Court will issue a commission to ascertain the proper market value. The provisions of sch. B of Act XXVI of 1867 considered. EX-PARTE MOONEE RANGAPPEN [3 Mad., 352

11 ———— *Dispute as to proper valuation.*—On a dispute arising as to the proper valuation of a suit, the Court may, on the application of either party, issue a commission and make an inquiry into the market value or the net profits of the property in dispute. The final decision as to the proper valuation is vested in the Court which hears the suit UMA SANKAR ROY CHOWDRY *v.* MANSUR ALI KHAN [5 B. L. R., Ap., 6: 13 W. R., 327

See WAJID ALI KHAN *v.* LALA HANUMAN PRASAD [4 B. L R., A. C., 139: 12 W. R., 484

12 ———— *Costs.*—In estimating the value of a suit, the costs must not be included in the amount in dispute. NILMADHAB DAS *v.* BISWAMBHAR DAS [3 B. L. R., P. C., 27: 12 W. R., P. C., 29 13 Moore's I. A., 85

13. ———— *Character of suit*

Court of its jurisdiction AJOODHIA LALL *v.* GUMANI LALL . . . 2 C. L. R., 134

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

14. ———— *Court Fees Act (VII of 1870), s. 17, Applicability of—"Cumulative reliefs"—Alternative relief.*—Where the plain-

15. ———— Incorrect valuation—*Appellate Court—Ground for dismissal of suit.*—The

16. ———— *Designed exaggeration of valuation—Suits Valuation Act (VII of 1887), s. 11—Munsif, Jurisdiction of—Code of*

judicially affected the disposal of the suit on its

Court

be re-

ury, 25

rjee v. Ishan Chandra Banerjee, 1 B. L. R., Ap, 91; and *Bonomally Nawn v. Campbell, 10 B. L. R., 193,* distinguished. HAMIDUNNISSA BIBI *v.* GOPAL CHANDRA MALAKAR . I. L. R., 24 Calc., 661 [1 C. W. N., 556

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VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

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CHUNDER ROY *v.* SARNAMOYI DEBI

[1 C. W. N., 136

18. ——————— *Pecuniary limits of jurisdiction—Suit filed in superior Court—Suit*

dinate Judge, it appeared that there had been an adjudication by District Munsif in a previous suit affecting the rights of the parties now in issue, and that the present claim was largely composed of interest.
relating
them as
within the pecuniary limits of the jurisdiction of a District Munsif, and that the claim had been unwarrantably exaggerated with a view to filing the suit in a superior Court, and so avoiding the plea of *res judicata*, and he thereupon returned the plaint to be presented in the proper Court *Held* that the procedure adopted was wrong, and that the whole suit should have been tried. KOTI PUJARI *v.* MANJAYA

[I. L. R., 21 Mad., 271

19. ——— Valuation of amended plaint—*Valuation ascertained at date of filing and at date of amendment*—The proper valuation in the case of an amended plaint is that ascertained at the date of the amendment, and not at the date of the original filing of the plaint. MORO VISHVANATH *v.* GANESH VITHAL . . . 10 Bom., 444

20. ——— Valuation of plaint presented again after return of plaint—*Return of plaint for want of jurisdiction—Second presentation under Court Fees Act, 1870—Act XXVI of*

date when the plaint was originally presented, the suit must be assumed to have been brought when the plaint was filed in the Munsif's Court, and therefore was properly valued under Act XXVI of 1867. KHELAT CHUNDER GHOSE *v.* NUSSEEBUNNISSA BIBEE . . . . . . 16 W. R., 47

21. ——— Account, Suit for—*Court Fees Act, 1870, s. 7, cl. (f), and s. 11*—By s. 7, cl. (*f*), of the Court Fees Act (VII of 1870), the plaintiff in a suit for accounts must state the amount at which he values the relief sought; but he is free to fix it as he thinks proper, subject to the provisions of s. 11, which preclude the execution of the decree in case it exceeds such value until the execution fee has been paid. GOVINDAS *v.* DAYABHAI

[I. L. R., 9 Bom., 22

22. ——————— *Subordinate Judge's power to make valuation—Court Fees Act*

Subordinate Judge was wrong. If the suit was

23. ——————— *Suit for account and for balance that may be found due—Appeal—*

relief sought approximately at Rs10, and this the only valuation stated in the plaint. The suit was filed in the Court of a first class Subordinate Judge who rejected the plaintiffs' claim Against

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accounts the plaint need only state approximately the amount sued for. As in the former instance the precise amount, so in the latter the approximate amount, stated in the plaint must be taken to be the amount of value of the subject-matter of the suit

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

for purposes of jurisdiction. KHUSHALCHAND MULCHAND v. NAGINDAS MOTICHAND [I. L. R., 12 Bom., 675

24. ———— Adoption, Suit to set aside—*Suit by reversioner—Jurisdiction*—For the pur-

BHAGA v. LAKSHMINARAYAN [I. L. R., 6 Mad., 192

25. ———— *Court Fees Act, s. 7—Suits Valuation Act (VII of 1887), ss 4, 10*—The value, for the purposes of jurisdiction, of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. *Keshava Sanabhaga v Lakshmi Narayana, I. L R, 6 Mad, 192*, dissented from. SHEO DENI RAM v. TULSHI RAM [I. L. R., 15 All., 378

26. ———— Annuity, Suit for declaration of right to—*Act XXII of 1867—Stamp*

might be assumed to be its market value, as enacted for analogous agreements by s 2, sch A, Act X of 1862. NARSINVACHARYA v. SVAMI RAYA CHARYA [5 Bom., A. C., 55

27. ———— Attachment, Suit to set aside—*Suit by trustees' deed given by insolvent for benefit of creditors*—The valuation for stamp duty of

28. ———— *Suit under Civil Procedure Code, 1882, s 283—Stamp—Possession—Court Fees Act, VII of 1870, sch. II, art 17, cl. 1.*—When a party prefers a claim or makes any objec-

29. ———— Attachment, Suit to set aside order removing—*Court Fees Act, VII of 1870, ss. 6 and 12, and sch. II, art 17, cl. 1—Valuation by subordinate Court—Suit to re-establish judgment-debtor's right to property on removal of attachment*—Where, on the removal of an attachment at the instance of a third party, the judgment-creditor brought a suit to establish the right of his judgment-debtor to the property from which the

KRISHNA JANARDAN . I L. R, 10 Bom., 610

30. ———— Award, Suit to carry out.—A suit to carry out an arbitration award need not be valued KHODA BUKSH v. MOWLA BUKSH [14 W. R., 255

31. ———— Award, Application to file—*Civil Procedure Code, 1882, s 525.*—The proper

S. C. PALUT BHAGUT v MONOHUR BHAGUT [13 C. L. R., 171

32. ———— Charge on property, Suit to establish—*Madras Civil Courts Act, 1873—*

the charge, the amount of the charge; when the charge is in excess of the property, the value of the property KRISHNAMA CHARIAR v. SRINIVASA AYYANGAR . I. L. R., 4 Mad., 339

33. ———— Damages, Suit for.—In determining the jurisdiction of the Court in a suit for damages, the amount claimed, and not that eventually found due, must be taken at the valuation. JOY DOORGA DASSEE v MANICK CHAND BABOO [16 W. R., 248

34. ———— Declaratory decree, Suit for—*Suit to establish right to attached property.*—*Held* that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property, the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree. *Second Appeal No. 320 of 1876, decided the 25th May 1876*, followed. GULZARI LAL v. JADAUN RAI [I. L. R., 2 All, 799

35. ———— *Suit for declara-*

determined the jurisdiction, that it was immaterial

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

that the amount of the decree was higher than the

[I. L. R., 9 All., 140

36. ——————— *Bengal Civil Courts Act (VI of 1871), s. 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1882), s 283—Attached property, Suit to establish right to.*—In suits brought under s 283 of the Civil Procedure Code to test the question whether a property which has been

property attached, unless the two amounts happen to be identical. *Janki Das* v. *Badri Nath, I. L. R., 2 All., 698, Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799, Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R., 4 Mad., 339*, and *Dayachand Nemchand* v *Hemchand Dharamchand, I. L. R., 4 Bom., 515,* followed. MODHUSUDUN KOER v RAKHAL CHUNDER ROY I. L. R., 15 Calc., 104

37. ——————— *Suit by claimant to attached property—Court Fees Act (VII of 1870)—Civil Procedure Code (1882), ss. 278 and 283.*—Where a claimant whose objection under s 278 of the Code of Civil Procedure has been disallowed,

not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s. 278 of the Code brings his suit and makes not only the execution-creditor in

judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. MOTI SINGH v. KAUNSILLA

[I. L. R., 16 All., 308

38.——————— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), ss. 19 and 21—Suit claiming property under the*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

must be regarded as the subject-matter of the suit, and the value of the suit within the meaning of ss. 19 and 21 of Act XII of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of property in execution of the decree. *Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799; Durga Prasad* v. *Rachla Kuar, I. L. R., 9 All., 140; Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R., 4 Mad., 339*, and *Modhusudun Koer* v. *Rakhal Chunder Roy, I. L. R., 15 Calc., 104,* distinguished. *Mahabir Singh* v. *Behari Lal, I. L. R., 13 All., 320,* and *Madho Das* v. *Ramji Patak, I. L. R., 16 All., 286,* referred to. DWARKA DAS v. KAMESHAR PRASAD I. L. R., 17 All., 69

39.——————— *Court Fees Act,*

Court of appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purposes of the Court Fees Act A suit by a person against whom an order has been made, under s. 246 of Act VIII of 1859, disallowing his claim to the attached property, need not be valued according to the value of the property, but can be brought on a stamp of R10, under Act VII of 1870, sch. II, art 17 (iii). CHUNIA v. RAM DIAL

[I. L. R., 1 All., 360

40.——————— *Suit to stay butwara proceedings under Beng Reg XIX of 1814,* —An allot-

LALL BAHADOOR SINGH

[I. L. R., 8 Calc., 126 : 10 C. L. R., 146

41.——————— *Suit for declaration of title to paid offices—Withdrawal of claim*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

the four offices must be taken for the purposes of jurisdiction SUNDARA v SUBBA [I. L. R., 10 Mad., 371

42. ——— *Suit to obtain a declaratory decree—Suit to set aside a summary order—Consequential relief—Prayer to have property released from attachment—Act VII of 1870 (Court Fees Act), sch. II, art. 17 (i) and (iii).*—*Held* that the Court-fee payable on the plaint and memorandum of appeal in a suit under s. 283 of the Civil Procedure Code praying (a) for a declaration of right to certain property, and (b) that the said property might be released from attachment in execution of a decree was R10 in respect of each of the reliefs prayed DILDAR FATIMA v NARAIN DAS [I. L. R., 11 All., 365

43. ——— *Pecuniary valuation of suit—Court Fees Act, s 12, sch II, art. 17*

was *res judicata* by reason of decrees passed in District Munsifs' Courts No objection was taken in the subordinate Court to the valuation of the suit *Held* that the plea of *res judicata* failed. *Per* MUTTUSAMI AYYAR, *J*—For the purposes of jurisdiction, the value of a suit for a mere declaratory decree must be taken to be what it would be if the suit were one for possession of the property regarding which the plaintiff seeks to have his title declared GANAPATI v CHATHU . I. L. R., 12 Mad., 223

44. ——— *Madras Civil Courts Act (Mad Act III of 1873), s. 12—Suit for declaration of membership of a tarwad—Valuation for the purposes of jurisdiction*—The plaintiff, alleging that he was carnavan of the defendant's tarwad, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief It appeared that the tarwad property exceeded R20,000 in value, but that the proportionate share of each member, computed as on an equal division, was less than R900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plaint *Held* that the value of the subject-matter of the suit was the value of the whole tarwad property, and not the value of what

45. ——— *Bengal Tenancy Act, s 149—Suit by third party claiming rent paid into Court in rent-suit, Nature of—Title-suit—Institution-stamp*—A suit by a third person under cl (3) of s. 149 of the Bengal Tenancy Act is not a title-suit, and need not be stamped as such. *Per* TOTTENHAM, *J*—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

else a declaratory suit. JAGADAMBA DEVI v. PROTAP GHOSE . . . I. L. R., 14 Calc., 537

46. ——— *Suit to establish right by reversal of deeds.*—When a plaintiff only sues for declaration of his title to certain lands on reversal of the kobalas said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds SHEO GHOLAM SINGH v. BEJOYRAM PROTAB SINGH . W. R., 1864, 317

47. ——— *Plaint insufficiently stamped—Court Fees Act (VII of 1870), s. 12*—The law allows a plaintiff in some cases to

stamp on the plaint and convert his suit into one for possession. CHOKALINGAPATESHANA NAICKER v. ACHIYAR . . . I. L. R., 1 Mad., 40

48. ——— *Court Fees Act*

the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds R5,000 in value The law may lay down, for purposes of revenue, certain rules for the valuation of suits, but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, upon which the jurisdiction of a Court depends. Whether a suit be merely to obtain a decree, declaratory of the plaintiff's title to, or whether it be to establish his title, coupled with a prayer for possession, of the rights of a deceased person, the inheritance is the object in dispute. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter. BAI MAHKOR v. BULAKHI CHAKER [I. L. R., 1 Bom., 538

49. ——— *Court Fees Act (VII of 1870), s. 17—Suit by reversioners to declare various alienations by a Hindu widow to*

DAIVACHILAYA PILLAI v PONNATHAL [I. L. R., 18 Mad., 459

50. ——— *Court Fees Act*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

[illegible]

51. ——— *Court Fees Act (VII of 1870)* [illegible]

that the plaintiffs themselves may be appointed trustees is not a prayer for possession requiring to be stamped at the value of the trust property, but is a prayer for relief falling within art. 17, cl. (vi), of the second schedule to Act VII of 1870. *Sonachala v. Manika, I. L. R., 8 Mad., 516; Delroos Banoo Begum v. Asghur Ally Khan, 15 B. L. R., 167;* and *Omrao Mirza v. Jones, I. L. R., 10 Calc., 599,* referred to and distinguished. THAKURI v. BRAMHA NARAIN . . . I. L. R., 19 All., 60

52. —— *Court Fees Act (VII of 1870), sch. II, art. 17, cl. (vi)—Suit to remove a trustee of a religious endowment—Semble*—That a suit, under s. 14 of Act XX of 1863 against the superintendent of a religious endowment for misfeasance is a suit which, for the purpose of payment of Court-fees, falls within art. 17, cl. (vi), of the second schedule of Act VII of 1870. *Delroos Banoo Begum v. Ashgar Ally Khan, 15 B. L. R., 167, Sonachala v. Manika, I. L. R., 8 Mad., 516,* and *Omrao Mirza v. Jones, I. L. R., 10 Calc., 599,* referred to. MUHAMMAD SIRAJ-UL-HAQ v. IMAM-UD-DIN . . . I. L. R., 19 All., 104

53. —— *Court Fees Act (VII of 1870), s. 7, cl. 4—Suit for declaration of right and for injunction.*—A suit for a declaration of right and for an injunction falls under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act (VII of 1870). The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court. *A* sued *B* and *C* (1) for a declaration of his title to certain property, and (2) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of R2,400 a year out of the income of the property in dispute. *A* valued each of the reliefs sought at R150, and affixed a Court-fee stamp of R20 to the plaint. The Court of first instance [illegible]

On appeal to the High Court,—*Held* that the suit fell under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act, and the plaintiff had a right to put his own valuation on the relief sought. SARDARSINGJI v. GANPATSINGJI . I. L. R., 17 Bom., 56

54. —— *Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court Fees Act (VII of 1870), sch. II, art. 17, cl. 3, and s. 7, cl. 4*—The plaintiffs specified in their plaint, as the reliefs sought by them,—(1) That it be declared by the Court that the property mentioned at foot is the joint ancestral property of the plaintiffs and not liable to attachment and sale in execution of the decree of the defendant 1, dated 4th December 1883, against the defendant 1. (2) That the costs of the suit be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at R6,000. (3) That any other relief which the Court may think the plaintiffs entitled to may also be granted. *Held* [illegible]

55. —— *Suit to compel trustees to account—Court Fees Act, sch. II, art. 17* [illegible] alleged to have been misappropriated by them, does [illegible] of art. 17. [illegible]

[I. L. R., [illegible]

56. —— *Sale in execution of decree—Suit by unsuccessful auction-purchaser for a declaration of right and for possession—Civil Procedure Code, 1882, s. 335—Court Fees Act (VII of 1870), s. 7.*—A purchaser of property at a sale held in execution of a decree obtained formal possession, but was resisted in obtaining actual possession by a person, who claimed to be the owner in possession of the property. An application made by the auction-purchaser under s. 335 of the Code of Civil Procedure was rejected, and the auction-purchaser accordingly filed a suit against the person in possession claiming a declaration of his right to the property, and to be put in actual possession thereof. *Held* that such a suit was properly stamped with a Court-fee stamp of R10. *Dhondo Sakharam Kulkarni v. Govind Babaji Kulkarni, I. L. R., 9 Bom., 20,* referred to. PIRTA DAS v. VILAYAT KHAN . I. L. R., 23 All., 394

57. —— Deed, Suit to set aside—*Suit for cancellation of bond—Value of subject-matter* [illegible] the subject-matter [illegible] and is to be [illegible] principal amount, and not that amount together with the interest payable thereon when the suit is instituted. GULAB RAI v. MANGLI LAL . I. L. R., 6 All., 71

58. —— *Appeal—Suit for cancellation of a document—Jurisdiction.*—The plaintiffs sued for the cancellation of a bond for the

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

payment of R6,000, together with interest thereon at the rate of 4 per cent. per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of R3,000, ... the rate of 1½ per ... frau- ... suit ... with interest at the rate of 1½ per cent per mensem. *Held* that the value of the subject-matter in dispute was the difference between R3 000 and R6 000 or thereabouts ...

59. —— —— *Deed prejudicing* ...

60 —— *Suit to set aside sale-deed as being forged* —A suit to set aside a false sale-deed was held to be sufficiently valued at the sum mentioned in that sale-deed THAKOOR PATUCK v. RAMSOOMBUN LAL 1 N. W., 17: Ed. 1873, 16

61. —— —— *Court Fees Act (VII of 1870), ss. 7, 12—Suit to cancel an instrument affecting land—Partial interest of plaintiff* ...

62. —— —— *Court Fees Act,* ...

PARATHAYI v. SANKUMANI [I. L. R., 15 Mad., 294

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

63. —— —— *Suit to cancel document on ground of fraud.*—The plaintiff executed a document whereby he created a charge of R4,500 upon certain immoveable property. In a suit to cancel the document upon the ground of fraud, —*Held* that the plaintiff valued his relief at R4,500, and that the District Munsif had no jurisdiction to try the suit. NARAINA PUTTER v. AYA PUTTER . . . . 7 Mad., 372

64. —— —— *Suit for possession of property alienated—Price stated in sale-deed*—In a suit for possession of a share of an ...

v. MEAH BIBEE . . 10 W. R., 207

65. —— Deed, Suit to enforce registration of—*Court Fees Act (VII of 1870), s. 7, cl. 5—Madras Civil Courts Act (Mad. Act III of 1873), ss 12, 14—Suit to enforce registration—Jurisdiction of Munsif.*—Suit in the Court of a ...

instrument comprised also an assignment of the right to manage a charity. The latter instrument was found to have been executed in supersession of the former, and the District Munsif passed a decree ...

66. —— Ejectment, Suit for—*Market value of tenant-right*—Where a landlord claims to eject a tenant, he claims to recover the tenant- ...

... 3 Agra, Rev., 5

67. —— *Suit to contest claim of occupancy raiyat—Court Fees Act, 1870, s. 7, cl 11, and sch. II, cl. 5.*—In a suit to eject a ...

68. —— *Court Fees Act (VII of 1870), s. 7, para. 5—Suits Valuation Act (VII of 1887), s. 8—Jurisdiction—Suit to eject a tenant at fixed rates.*—A suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of para. 5, s. 7 of the Court Fees Act, 1870, and the valuation of such suit for the purposes

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

... he value of the ... to say, of the ... nor of merely ... v. GIRNANDAN BHAGAT . . . I. L. R., 15 All., 63

69. ——— *Suit to have a lease to set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court Fees Act—Bengal Civil Courts Act, ss. 20, 22.*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, ...

... mentioned suits, that in estimating their value for the purposes of the Court Fees Act, 1870, or of the Bengal Civil Courts Act, 1871, the value of the buildings which might have to be demolished should not be taken into account. JOGAL KISHOR v. TALE SINGH. BINDESHRI CHAUBEY v NANDU

[I. L. R., 4 All., 320

70. ——— **Emoluments attached to office, Suit for**—*Court Fees Act, 1870, s. 7, cls. 2, 4—Claims for future emoluments—Jurisdiction—Madras Civil Courts Act, 1873, s. 12—Por-* ...

... portion of the claim he valued, under cl. 2 of s 7 of the Court Fees Act, at ten times the amount of the value claimed for one year. The value of the claim thus stated exceeded the pecuniary limit of the jurisdiction of the District Munsif. The Subordinate Judge held that this portion of the claim was not actionable, inasmuch as the right to the emoluments was conditional upon services to be rendered, and did not fall under cl. 2 of s. 7 of the Court Fees Act, not being a fixed sum payable periodically, and therefore he held that the plaint was improperly valued, that the suit was not within his jurisdiction, and that the plaint should be returned to be presented to the proper Court *Held* that this order was right. KRISHNAN v. REVI VARMA

[I. L. R., 8 Mad., 384

71. ——— **Interest**—*Court Fees Act (VII of 1870), s. 7—Claim for interest from institution of suit until payment—Future mesne* ...

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

the Court Fees Act (VII of 1870). VITHAL HARI ATHAVLE v GOVIND VASUDEO THOSAR

[I. L. R., 17 Bom., 41

72. ——— **Instalment-bond, Suit on.** ...

73. ——— **Khoti estate, Suit for recovery of**—*Act XXVI of 1867, sch. B, cl. 11—Amount of assessment.*—*Held* that a khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 1867, sch. B, art. 11, note (*a*), Sp. Rule 1 for the Bombay Presidency. EX-PARTE VITHAL *alias* GOPAL GONESH BIVALKAR . 4 Bom., A. C., 148

74 ——— **Land, Suit for**—*Court Fees Act (VII of 1870), s. 7, art. 5, proviso—Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission.*—*Per* WEST and NANABHAI, JJ.—The proviso to art 5 of s 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement made in order to show the proper amount of the land-tax may be regarded as a remission In the case of a talukhdari village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual jumma, or lump assessment instead of the full survey assessment for the whole village,—*Held* by a majority of the Full Bench that the difference in amount between the jumma and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to cl. (3) of the proviso to art. 5 of s 7 of the Court Fees Act (VII 1870). *Per* BIRDWOOD, J.—The remission contemplated by cl. (3) of the proviso "*is an express* remission, and not a mere difference in amount between the actual assessment payable by a talukhdar and the survey assessment." The three clauses of ... which have ... narily ... mbay ... lands ... s. the second to lands settled for a longer period or permanently, and the third to inam lands on which the whole or a part of the survey assessment has been expressly remitted. The talukhdars are not inamdars. They are landholders liable to pay a land-tax, but not under a survey settlement, such as is applicable

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

to lands for which provision seems to have been specially made in the proviso to art. 5 of s. 7 of the Court Fees Act. No part of the proviso therefore applies to a suit for the possession of lands in a talukhdari village Such a suit should be valued according to cl. (*d*) of art. 5 of s 7 of the Court Fees Act. ALA CHELA *v.* OGHADBHAI THAKERSI

[I. L. R., 11 Bom., 541

BAVAJI MOHANJI *v.* PUNJABHAI HANUBHAI

[I. L. R., 11 Bom., 550 note

75. ———————— *Court Fees Act (VII of 1870), s. 7, cl. 5 (c), (e)—Paramba in Malabar, Valuation of suit for—Suit for garden land or land paying no revenue*.—On its appearing that a paramba in Malabar is not subject to land tax, but that a tax is levied on trees of certain kinds which may grow on it,—*Held* that a paramba must be regarded for the purposes of the Court Fees Act [illegible]

[illegible]

76. ——— Manager, Suit to remove—*Court Fees Act, 1870, s. 7—Suit to eject trustee—Jurisdiction—Specific Relief Act, s 42.*—By an agreement between *S* and *M*, members of the same Hindu [illegible] able pro[illegible] family [illegible] supervis[illegible] to *S* and observe certain other conditions. *S* sued *M* in the Court of the District Munsif, and prayed for a decree for the removal of *M* as manager and for the appointing of himself as manager of the property *M* objected that the Court had no jurisdiction, because the property exceeded in value the pecuniary limits of the jurisdiction of the District Munsif's Court as fixed by s 12 of the Madras Civil Courts Act, 1873 *Held* that *S* was not entitled to sue for the removal of *M* without praying for his ejectment from the property and that, as the property exceeded in value R2,500, the District Munsif had no jurisdiction. SONACHALA *v.* MANIKA

[I. L. R., 8 Mad., 516

77 ———————— *Karnavan of Malabar tarwad—Madras Civil Courts Act, 1873, s. 13*—For the purpose of jurisdiction, a suit to [illegible]

[I. L. R., 4 Mad., 314

78. ———————— *Suit for removal of karnavan—Court Fees Act, 1870, sch II, art. 17, cl. 6*—A suit for the removal of a karnavan of a Malabar tarwad on the ground of misfeasance is incapable of valuation and falls under s. 6, art 17, sch. II of the Court Fees Act, 1870 GOVINDAN NAMBIAR *v.* KRISHNAN NAMBIAR

[I. L. R., 4 Mad., 146

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

79. ———————— *Act XX of 1863*

[illegible]

See SRINIVASA *v.* VENKATA

[I. L. R., 11 Mad., 148

80. ———————— *Madras Civil Courts Act, s 12—Court Fees Act, sch. II, art. 17, s. 6—Suit to remove a karnavan—Valuation for jurisdiction*—Although, for the purposes of the Court Fees Act, a suit to remove the karnavan of a Malabar tarwad is incapable of valuation and subject to the fee prescribed by s 6, art 17 of sch II of that Act, yet, for the purposes of determining jurisdiction under s 12 of the Civil Courts Act, the right of management, which is the subject-matter of the suit, must be valued If the value is estimated *bonâ fide* by the plaintiff, the Court should adopt it. KRISHNA *v.* RAMAN I. L. R., 11 Mad., 266

81. ———————— *Suit to remove a* [illegible]

the suit was not one for the recovery of tarwad properties, nor to be valued as such, but it was a suit for relief that was incapable of valuation, and therefore was within the jurisdiction of the District Munsif KUNHAN *v.* SANKARA

[I. L. R., 14 Mad., 78

82. ——— Mesne profits, Suit for—*Denial of plaintiff's title*.—In a suit for wasilat, the stamp on the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendant may deny the title of the plaintiff to the land KADIR BUKSH *v.* WISE

[Marsh., 165: 1 Ind. Jur., O. S., 103
1 Hay, 370

83. ———————— *Suit for possession and mesne profits.*—Where a suit for mesne profits is united with one for possession, no separate stamp fee is necessary in respect of mesne profits SYEDUN *v.* ALLAH AHMED . W. R., 1864, 327

84. ——— Mortgage—*Court Fees Act (VII of 1870), s. 7, cl 19—Suit by the mortgagee against the heir of the mortgagor for recovery of the mortgage debt by sale of mortgaged and other property—Suit for money*.—A suit instituted by the [illegible]

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

a suit for money, and should be valued, not at the principal debt, but the entire amount including interest. KASHINATH BALLAL *v* GANPATRO AMRITESHVAR JOSHI . I. L. R, 18 Bom., 696

85. ——— Court Fees Act *(VII of 1870), s. 7, cls 5 and 9—Suit against mortgagee for recovery of mortgaged property* — Cl. 9, s 7 of the Court Fees Act, applies not only

[1 C. W. N., 670

86. ——— Partition, Suit for—*Madras Civil Courts Act, s. 12—Jurisdiction—Subject-matter of suit.*—In suits for partition, the value of the property of which the plaintiff claims a share, and not the value of the share claimed, determines the jurisdiction of the Court under s 12 of the Madras Civil Courts Act, 1873 VYDINATHA *v.* SUBRAMANYA . I. L. R., 8 Mad., 235

87. ——— *Suit for partition of share of land* —In a suit for ascertainment, partition, and delivery to the plaintiff, of a share of certain land, the suit should be valued at the amount of the value of the whole estate. *Vydinatha v Subramanya, I. L. R, 8 Mad., 235*, followed NAGAMMA *v* SUBBA I. L. R., 11 Mad., 197

88. ——— Court Fees Act *(VII of 1870)—Suit for partition and for possession of share.*—The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share. BALVANT GANESH *v* NANA CHINTAMON [I. L. R., 18 Bom., 209

89. ——— *Suit for partition of family property—Valuation for purposes of jurisdiction—Court Fees Act (VII of 1870), s. 7, cl (iv) (b)—Suits Valuation Act (VII of*

90. ——— *Suits Valuation Act (VII of 1887), s 8—Jurisdiction of Subordinate Judge—Valuation of a suit for partition.*—In a suit for partition of certain property, the value of the whole property sought to be divided was over R5,000 Plaintiff valued his share at R250, and paid Court-fees on this amount The suit was filed in the Court of a Subordinate Judge of the first class *Held* that the value of the subject-matter of the suit could not be held to be more than R250, so that the suit ought to have been filed in the Court of the second class Subordinate Judge. MOTIBHAI *v.* HARIDAS . I. L. R., 22 Bom., 315

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

91. ——— *Hearing fee, Calculation of—Market value of property.*—The ordinary rule for assessing the hearing fee according

the value of the same share not partitioned. KIRTEE CHUNDER MITTER *v.* ANNATH NATH DEB [13 C. L. R., 253

92. ——— *Suit for division of lands according to established custom.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares

existence and validity of the custom,

of the property actually sued for. VENKATASVAMI NAYAKKAN *v.* SUBBA RAU. SANKARA SUBBAIYAN *v* SUBBA RAU . . 2 Mad., 1

93. ——— *Jurisdiction—Subject-matter of suit—Act XIV of 1869, s 25.*—What *primâ facie* determines the jurisdiction of

this is so notwithstanding a *bonâ fide* error in the estimate made by the plaintiff, but plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained, and which there is no reasonable ground for expecting to sustain. The subject-matter of a claim, within the meaning of s. 25 of Act XIV

94. ——— *Bengal, N.-W. … Act (XII*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

value of the property in suit, and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mitter* v. *Aunath Nath Deb, I L R, 8 Calc, 757*, followed. The Court Fees Act (VII of 1870), s 7, cl 4, does not contem-

95.————— *Stamp in partition suit* —The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a Court-fee stamp of R10. The defendants admitted that three of the properties were ancestral and joint, but as to the other items the second defendant stated that they were the self-acquired property of her ... was ... was ... sion ... erest. ... this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal,—*Held* by ...

and that only, must be looked at. MOHENDRO CHANDRA GANGULI v. ASHUTOSH GANGULI [I. L. R., 20 Calc, 762

96. ————— "*Subject-matter in dispute*"—*Jurisdiction of Munsif*—*Claim for partition of share less than R1,000 in family property exceeding R1,000.*—In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than R1,000, and the value of the whole family property exceeded R1,000. *Held* that the subject-matter in dispute in the ...

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tion to hear the suit *Vydinatha* v. *Subramanya, I. L. R., 8 Mad, 235*, *Kirty Churn Mitter* v. *Aunath Nath Deb, I. L. R., 8 Calc, 757*, *Khoorshed Hussein* v. *Nubbee Fatima, I. L. R. 3 Calc, 551*, and *Ram Chandra Narayan* v. *Narayan Mahadev, I. L. R., 11 Bom, 216* distinguished. HIKMAT ALI v. WALI-UN-NISSA I. L. R., 12 All, 506

97 — ————— *Value of share on partition*—*Subject matter of suit*—*Munsif Jurisdict* ...
part ...
an ...
was ...
Hel ...

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

share sued for and not the total value of the agraharam, and therefore the suit should have been filed in the District Munsif's Court. *Vydinatha* v. *Subramanya, I. L. R., 8 Mad, 235*, distinguished. RAMAYYA v. SUBBARAYUDU . I. L. R., 13 Mad., 25

98 — — *Madras Civil Courts Act (Mad. Act III of 1873), s 12 Valuation of relief*—*Suits Valuation Act (VII of 1887), s 11*—*Suit by a purchaser at a sale in execution of decree for partition*—*Jurisdiction of Munsif and Subordinate Judge* — The purchaser at a Court-sale of eight pangus out of an estate of $28\frac{1}{8}$ pangus sold them to the plaintiff. The whole estate was worth more than R2,500, but the eight pangus sold to the plaintiff were worth less than that sum. The plaintiff brought this suit in a Subordinate Judge's Court against his vendor and certain persons, ...

suit had not been prejudicially affected, the Suits Valuation Act, s 11, was applicable, and the decree of the Subordinate Judge should be confirmed. *Quære*—Whether the Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than R2,500 in value. *Krishnasami* v. *Kanakasabai, I. L. R., 14 Mad., 183* NARAYANAN v. NARAYANAN . I. L. R., 15 Mad., 69

99. ————— *Suits Valuation Act*—*Act VII of 1887, s 8*—*Order by Appellate Court directing that the plaint be returned*—*Appeal against such order*—*Amendment of memorandum of appeal.* The plaintiff sued in the Court of the District Munsif to recover his share of family property. The amount of the property exceeded, but the amount of the share claimed was within the pecuniary limit of the jurisdiction of the District Munsif who passed a decree for the plaintiff. On appeal it was held that the suit was not within the jurisdiction of the Court. The decree accordingly was reversed, and it was ordered that the plaint be returned for presentation to the proper Court. On second appeal to the High Court,—*Held* that plaintiff's remedy was not by way of a second appeal, but he should have proceeded under Civil Procedure Code, s 588. The petition of appeal having been allowed to be amended in accordance with this ruling,—*Held* that the Court of the Munsif had jurisdiction to entertain the suit. CHINNASAMI PILLAI v. KARUPPA UDAYAN . I. L. R., 21 Mad., 234

100 ————— Partnerships—*Suit for share of profits of partnerships after winding up and adjustment of accounts*—*Contract Act, s. 265*—*Court Fees Act (VII of 1870), s. 7, cl. 4*—*Suits Valuation*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

Act (VII of 1887), s 8—Jurisdiction of Munsif.

101. ——— Possession, Suit for—*Suit by auction-purchaser—Procedure.*—In a suit for possession by an auction-purchaser, where plaintiff valued his claim at what he paid for the property,—*Held* that the valuation was *primâ facie* not incorrect, and, until rebutted by evidence and the result of a proper inquiry, should be accepted as correct. If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867. SOOBUDRA *v.* RAM PROKASH SINGH . . 16 W. R., 5

102. ——— *Suit after foreclosure—Court Fees Act, s 7, cl 9*—Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit, in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s 7, cl 9. AHOLLYA BAI DEBIA *v.* SHAMA CHURN BOSE [1 C. L. R., 473

103. ——— *Civil Procedure Code, 1859, s 229, Procedure under—Fresh suit—Jurisdiction*—For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh

the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim MUTTAMMAL *v* CHINNAN GOUNDEN [I. L. R., 4 Mad., 220

104. ——— *Madras Civil Courts Act (III of 1873), s 1—Jurisdiction—Suit to recover share of inheritance—Subject-matter of suit*—The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held* that the suit was to be valued

105. ——— *Suit for posses-*

value his claim according to the price stated in the kobala. AUGOPURA CHOWDHRY *v.* MEAH BIBEE [10 W. R., 207

106. ——— *Suit for possession and declaration of title.*—Where a suit is for recovery of possession (with mesne profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal, and requires a stamp of R10 HURRO NATH BHUTTACHARJEE *v* HARVEY . . 25 W. R., 23

107. ——— Suit for possession and mesne profits—*Value of the original suit—Ben-*

merely upon the property sought to be recovered, but also upon the value or amount of the profits recoverable MOHINI MOHAN DAS *v.* SATIS CHANDRA ROY [I. L. R., 17 Calc., 704

108. ——— *Court Fees Act (VII of 1870), ss. 7 and 11—Mesne profits from the institution of suit, Claim as to—S. 169 of the Code of Civil Procedure (Act VIII of 1859)—S 50, cl (f), and s. 211 of the Code of Civil Procedure (Act XIV of 1882).*—The plaintiff in his plaint prayed for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those

to a claim for mesne profits for which an amount can be and has been claimed by the plaint, and in respect of which some fee has been actually paid RAMKRISNA BHIKAJI *v.* BHIMABAI [I. L. R., 15 Bom., 416

MAIDEN *v.* JANAKIRAMAYYA [I. L. R., 21 Mad., 371

109. ——— Pre-emption, Suit for.—

SINGH [3 B. L. R., Ap., 143 : 14 W. R., 238 note

NAUNHOO SINGH *v.* TOFAN SINGH [14 W. R., 228

110. ——— *Jurisdiction—Bengal Civil Courts Act (VI of 1871), s. 20.*—In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

property itself, determines the question of jurisdiction under s. 20, Act VI of 1871. NAUN SINGH v. RASH BEHARY SINGH I. L. R., 13 Calc., 255

111. ———————— *Court Fees Act (VII of 1870), ss 5 and 7, cls. (5) and (6)—Suit for pre-emption of separate plots of land not being a fractional share of a revenue-paying unit —Held* that in a suit for pre-emption in respect of separate

land in suit, and not, as is the case where the suit is for a definite fractional share, on five times the Government revenue. REFERENCE UNDER THE COURT FEES ACT, 1870, s 5

[I. L. R., 16 All., 493

112.——— Redemption, Suit for—*Value for purpose of jurisdiction.*—The purchaser of the equity of redemption of certain land sued to redeem the same. He made the mortgagor and vendor of the land a *pro formâ* defendant *Held* that the value of the subject matter of the suit was not the market value of the land, but the amount of the mortgage money. KUBAIR SINGH v ATMA RAM

[I. L. R., 5 All., 332

113. ———————— *Madras Civil Courts Act, 1873, ss 12 and 14—Value of improvements —Per curiam* (TURNER, C.J., and MUTTUSAMI AYYAR, J., dissenting) —Where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining the "value of the subject-matter of the suit" for the purposes of jurisdiction under s 12 of the Madras Civil Courts Act. *Per* TURNER, C.J. (MUTTUSAMI AYYAR, J., concurring) – By the custom of Malabar, a condition is attached to all kanom demises that the mortgagor shall pay the value of improvements made by the mortgagee during the term of the demise before he can redeem, and the repayment of the sums spent in improvements is thus secured by the mortgage in the same manner as the repayment of the principal advanced, and must be calculated in determining the value of the subject-matter of the suit for the purpose of jurisdiction. ZAMORIN OF CALICUT v NARAYANA . I. L. R., 5 Mad., 284

ANONYMOUS . I. L. R., 5 Mad., 287 note

114. ———————— *Jurisdiction of Munsif.*—The integrity of a joint usufructuary mortgage having been broken in consequence of

VALUATION OF SUIT—*continued*

1. SUITS—*continued.*

115. ———————— *Joint mortgage —Jurisdiction—Court-fee—Valuation of suit— "Subject-matter in dispute"—Act VII of 1870, s. 7, art (ix)—Act VI of 1871, s. 20—Statute, Construction of*—A deed of mortgage was executed by *P*, *T*, and *S* for R4,000. *A*, the purchaser of the

Act (VII of 1870), that the defendants-mortgagees having bought up the equity of redemption of two of the mortgagors, and *pro tanto* extinguished their mortgage-debt and so by their own act empowered the plaintiff to sue for redemption of one-third of the property, the principal money now secured as

in favour of the subject. *Balkrishna Dhondo* v. *Nagvekar, I. L. R., 6 Bom., 324*, referred to. *Held* also, with reference to the terms of s. 20 of the Bengal Civil Courts Act (VI of 1871), that the "subject-matter in dispute" in suits of this kind was the amount of the mortgage-debt and the mortgagee's

I. L. R., 5 All., 438

brought of jurisdiction. If the overvaluation was *bonâ fide* and had not the effect of altering the appellate jurisdiction, that is to say, did not cause the appeal from the judgment of the Court of first instance to lie to a different Court from that to which it would

VALUATION OF SUIT—*continued.*

1. SUITS *continued*

have lain had the suit been instituted in a Court having a more limited jurisdiction RAJENDRO LALL GOSSAMI *v.* SHAMA CHURN LAHORI

[I. L. R., 5 Calc., 188
4 C L. R., 417

117. ——— *Suit to redeem mortgaged land paying revenue to Government.*—The stamp duty payable under Sch. B of Act X of 1862, on a suit to redeem mortgaged land paying revenue to Government should be calculated on the sum for which the land is mortgaged, and not on the market value of such land. NANDRAM SUNDARJI NAIK *v.* BALAJI VITHAL 5 Bom., A. C., 153

118 ——— *Suit by kanom holder against jenmi and holders of prior kanom in possession.*—A suit brought by a kanom-holder against the jenmi and the holders of a prior kanom in possession, to recover possession of the lands, may be properly treated, for the purpose of jurisdiction, as a suit for land, although it results in a decree for redemption, and, if regarded as a redemption suit, would be cognizable by a Court of subordinate jurisdiction. MARAKAR *v.* PARAMESWARAN

[I. L. R., 6 Mad., 140

119 ——— *Court Fees Act (VII of 1870)—Dekkan Agriculturists' Relief Act (XVII of 1879) Ch. II*—The valuation of a suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage, or claimed on it by the mortgagee. It is that amount, and the right connected with it, which is the usual subject of contention in a mortgage-suit. *Per* BIRDWOOD, J —The rules laid down in the Court Fees Act (VII of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction. RUPCHAND KHEMCHAND *v.* BALVANT NARAYAN

[I. L. R., 11 Bom., 591

120. ——— *Dekkan Agriculturists' Relief Act (XVII of 1879), Ch. II, s 3 —Appeal—Jurisdiction.*—In a redemption-suit the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied, and the mortgagee does not say what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit *Rupchand Khemchand v. Balvant Narayan I L R, 11 Bom., 591*, followed. The plaintiffs, who were agriculturists, sued to redeem certain lands, alleging that they had been mortgaged to the defendants' father for R50, and that the debt had been satisfied out of the rent and profits of the mortgaged property The defendants denied the alleged mortgage. The Subordinate Judge found that the mortgage was proved and the mortgage-debt had been more than paid off out of the profits of the property in dispute. He therefore passed decree awarding possession to the plaintiffs. Against this decree the defendant appealed. The District Court found that the mortgage was not established and reversed the decree of the Subordinate Judge. *Held*, on second appeal, that no appeal lay to the District Court from the decision of the Subordinate Judge. As the Subordinate Judge found that no sum remained due on the mortgage, and as the original advance was alleged to have been R50, the suit was governed by the provisions of Ch. II of the Dekkan Agriculturists' Relief Act (XVII of 1879). AMRITA BIN BAPUJI *v.* NARU BIN GOPALJI SHANJI

[I. L. R., 13 Bom., 489

121. ——— *Suit on mortgage—Suit for redemption of mortgage—Value of subject-matter of suit.*—In a suit upon a mortgage, where the sum due upon the mortgage is unknown, what determines the value of the subject-matter of the suit is the amount of the mortgage the rights connected with which are the subject of contention. RAM CHANDRA BABA SATHE *v.* JANARDHAN APAJI

[I. L. R., 14 Bom., 19

122. ——— *Court Fees Act (VII of 1870), s 7—Suit for redemption of mortgage*—In a suit for the redemption of a kanom the institution fee must be computed on the kanom debt as it originally stood. REFERENCE UNDER COURT FEES ACT, s. 5 . I. L. R., 14 Mad., 480

123. ——— *Court Fees Act (VII of 1870), ss. 7 (ix) and 17—Redemption suit against mortgagee in possession—Arrears of rent covenanted for, to be deducted from the mortgage amount*—In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for and the plaintiff asks

[illegible]

gage EACHARAN PATTER *v.* APPU PATTER

[I. L. R., 19 Mad., 16

124. ——— *Suit to redeem mortgage and for rent—Madras Civil Courts Act (Mad. Act III of 1873), s. 14.*—The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraima right in a certain public devasom to which other land belonged, demised lands of both description on kanom to the defendants

[illegible]

KARA . I. L. R., 18 Mad.

125 ——— Restitution of conjugal rights, Suit for—*Burma Courts Act, 1875, s 49*— ... of the Burma Courts

[illegible]

VALUATION OF SUIT—*continued.*

1. SUITS—*concluded.*

amount or value capable of being estimated in money, and that that amount or value must fall within certain specified limits. A suit for the restitution

126. ———— A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction. *Golam Rahman* v. *Fatima Bibi, I. L. R., 13 Calc., 232,* followed. MOWLA NEWAZ v. SAJIDUNNISSA BIBI I. L. R., 18 Calc., 378

127. ———— Sale, Suit to set aside—*Sale in execution of decree—Value of property sold.*—In a suit to set aside an auction sale, the plaint must be stamped as if the suit were for the recovery of the property. DRAPU CHOWDHRY v. ISHAN CHUNDER DAS . 9 C. L. R., 231

128. ———— Share of land, Suit for—*Suit relating to land—Rental of share.*—In valuing a suit relating to a share of land, the rental of the share is to be the criterion of the stamp. RAM BUKSH THAKOOR v. AJOODHYA LAL

[2 W. R., Mis., 45

129. ———— Waste lands, Suit for—*Act XXIII of 1863 (Waste Lands), s. 5, Suit under.*—In a suit under s. 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objection to the sale or other disposition of such land, the plaint must be on a stamp of R100. GREESH CHUNDER ROY v. COLLECTOR OF SYLHET

[7 W. R., 349

2. APPEALS.

valuation of the property in suit. MAFIZUDDIN v. KARIMUNISSA BIBEE

[6 B. L. R., Ap., 11: 14 W. R., 381

ISHAN CHANDRA MOOKERJEE v. LOKENATH ROY

[6 B. L. R., Ap., 12: 14 W. R., 451

1887), s. d, cl. 13.—For the purpose of determining the proper Appellate Court in a civil suit, what is to be looked to is the value of the original suit, that is to

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

value of the suit had been altogether misrepresented in the plaint. MAHABIR SINGH v. BEHARI LAL

[I. L. R., 13 All., 320

132. ———— ———— —*Ground of appeal going to the whole of the respondents' decree.*—Where one of several appellants takes a ground of appeal which goes to the root of the respondent's case and which, if successful, would deprive the respondent of his decree as a whole, and not merely of

able on such ground of appeal. BUJHAWAN RAI v. MAKUND LAL . . I. L. R., 15 All., 112

133. ———— ———— ————*Suit of the nature cognizable in Courts of Small Causes.*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. NAZAR HUSAIN v. KESRI MAL . . I. L. R., 12 All., 581

134. ———— *Jurisdiction of District Judge—Valuation put by plaintiff in his plaint—Amount awarded by decree—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887).*—The pecuniary jurisdiction of a civil Court on its appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint; and if a suit, having regard to the valuation in the

to entertain a suit. *Mahabir Singh* v. *Behari Lal, I. L. R., 13 All., 320,* referred to. MADHO DAS v. RAMJI PATAK . . . I. L. R., 16 All., 286

135. ———— ———— ———— *Jurisdiction—*

NARAIN SINGH . . . 5 B. L. R., Ap., 17

136. ———— Undervaluation—*Ground for dismissing appeal—Insufficient stamp.*—Where an

S. C. WOLEE ALUM v. MISSUN . 12 W. R., 50

137. ———— *Ground for dismissing appeal.*—When a suit has been admitted upon a certain stamp, tried, and decreed for the

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

plaintiff, "undervaluation" is no ground for dismissing the defendant's appeal EMAMUDDIN KHAN v. RAMKISHORE KOWAR . 5 B. L. R., Ap., 30

138 ——— *Insufficiently-stamped appeal—Deputy Registrar, Power of—Civil Procedure Code, 1859, s. 31.*—The Deputy

pellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time AMBUR ALI v. KALI CHAND DOSS . . . . 24 W. R., 258

139. ——— **Overvaluation**—*Refund of stamp duty.*—Where excess stamps had been filed in consequence of an overvaluation of the appeal, the surplus amount was ordered to be refunded. IN THE MATTER OF GRANT . . . 14 W. R., 47

140. ——— **Law applicable to valuation** —*Law in force at presentation of appeal.*—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence in the decision. ANONYMOUS . . . 5 Mad., Ap, 44

BHUGOBUTTY KOOER v KUSTOOREE KOOER [15 W. R., 272

141. ——— *Civil Procedure Code, 1859, s. 229—Change of law between date of original suit and date of claim, Effect of, on jurisdiction.*—The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which has led to it. For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh suit, and not a continuation

Court cannot try the claim. MUTTUMMAL v. CHINNANA GOUNDEN . . I. L. R., 4 Mad., 220

142. ——— **Bengal Civil Courts Act (Beng. Act VI of 1871), s. 22**—*Subject-matter in dispute—Jurisdiction of the High Court.*—The appeal from the decree or order of a Subordinate

DULI CHAND . . . . 9 B. L. R., 190

S.C DOOLY CHUND v. NIRBAN SINGH. NURRENDER NARAIN SINGH v. SREE NARAIN DOSS NEERBHOY SINGH v RAMPERSHAD SINGH [18 W. R., 261

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

So also held, under s 18, Act XVI of 1868, by the majority of the Court (PEARSON, J, dissenting) of the North-Western Provinces in MAHOMED HOSSEIN KHAN v SHIB DYAL [5 N. W., 108: Agra, F. B, Ed. 1874, 276

MASOOMA BEBEE v NAZUR FATMA [1 N. W., 117: Ed. 1873, 203

CHUNDER BHAN SINGH v. JAIRAM GEER [5 N. W., 175

But *see* SRIMATI DASI v. SOUDAMINI DOSSEE [9 B. L. R., 192 note

143. ——— *Appeal where one suit has been split up into several.*—Where a suit for R13,777 was brought against defendants whose interests were not identical, and the Judge ordered separate trials of the different causes involved,

DASSEE . . . . . 15 W. R.,

144 ——— *Interest on amount of appeal.*—Where an appeal was brought from an order in execution of the decree in a suit in which both the amount sued for and the amount of the decree were below R5,000, but by reason of interest the appeal was valued at more than that sum, the case was held to come within the principle of *In re Duli Chand.* RAI DHANPAT SINGH BAHADOOR v. MADHUMATI DEBI [9 B. L. R., 197 note: 18 W. R., 316

145. ——— *Subject-matter in dispute—Jurisdiction of High Court—Execution of decree—Act XXIII of 1861, s. 11.*—The

interest since decree, grown to a sum exceeding R5,000 RUTTANJOTE KOOER v RAM DASS [10 B. L. R., 290: 19 W. R., 131

146. ——— *Execution of decree*—When the High Court called up an appeal

NOOGRA SAHOY v. BYJNATH LAL [10 B. L. R., 291 note: 15 W. R., 164

147. ——— *Suit in value over R5,000—Appeal heard by Judge without jurisdiction*—The High Court in special appeal remanded a case to the Subordinate Judge for re-trial. The case having been re-tried, an appeal against the second decree of the Subordinate Judge was filed in the

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

be recognized, and that the appeal would not lie THAKOOR PERSHAD SINGH v MAHADEO SINGH [5 N. W., 210

148. ——— **Computation of value**—*Valuation of appeal for jurisdiction—Mad. Act III of 1873 (Madras Civil Courts Act)*—According to s 13 of Act III of 1873 (the Madras Civil Courts Act), it is the money value of the original suit that fixes the jurisdiction throughout the sub-

had no jurisdiction to hear the appeal. MUTHUSAMI PILLAI v. MUTHU CHIDAMBARA CHETTI [7 Mad., 356

149. ——— **Appeals in measurement cases**—*Miscellaneous petitions.*—Petitions of appeal in cases to obtain an order for measurement may be written on the stamp used for miscellaneous petitions SMITH v NUNDUN LAL [6 W. R, Act X, 13

150. ——— *Right to measure valued at specified amount.*—Where a zamindar

BISWAS v. SHIBNATH BAGCHEE . 8 W. R., 14

151. ——— **Appeal from order declaring party to have no locus standi**—*Miscellaneous appeal—Petition*—An appeal from an order of the lower Appellate Court, declaring that a party who claimed to be in possession of property taken in execution of a decree to which he was no party, and with which he had no concern, had no

152. ——— **Appeal from order rejecting application to set aside ex parte decision**—*Summary appeal*—The stamp required for a petition of appeal from an order rejecting an application to set aside an *ex parte* decision under s 119, Act VIII of 1859, was a two-rupee stamp. Such an appeal was treated as a summary and not a regular appeal PARBUTTY v. GREEDHAREE LALL [4 W. R., Mis., 15

153. ——— **Appeal from order rejecting plaint for misjoinder**—*Miscellaneous appeal—Stamp.*—An appeal from an order rejecting a plaint for misjoinder is a miscellaneous appeal; and if it is rejected, an appeal from the order of rejection is also of the nature of a miscellaneous appeal, and is to be valued and stamped as such. KOSSELLA KOER v. BEHAREE PATUCK . . . 12 W. R., 70

154 ——— **Appeal by mortgagee on**

KHAN v MISSER KOONDUN LALL BHEEKA v. NUND KISHORE [Agra, F. B., 158: Ed. 1874, 119

155. ——— **Appeal in suit for profits in respect of several years**—*Court-fees—Dis-*

in respect of several years, the proper Court-fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed, and not one calculated separately on the amount of profits claimed for each year. MUHAMMAD MALICK KHAN v NIRBHAI BIBI . I. L. R, 7 All., 761

156. ——— **Appeal from rejection of claim by forest settlement officer**—*Madras Forest Act (V of 1882), s. 10—Appeal to the Dis-*

art 11 (a) of sch II of the Court Fees Act, 1870. KAMARAJA v. SECRETARY OF STATE FOR INDIA [I. L. R., 8 Mad, 22

157. ——— **Appeal from order disallowing an application to file an agreement to refer to arbitration**—*Court-fee, Mode of calculation of.*—*Per* OLDFIELD, J —The Court-fee payable on a memorandum of appeal from an

158. ——— **Appeal against award under Land Acquisition Act**—*Court Fees Act (VII of 1870), ss. 5 and 8* An appeal against an award made by the District Judge under Land Acquisition Act (I of 1894) was filed in the High Court; the appeal memorandum bearing a Court-fee stamp of R10 only was admitted by the Registrar, no

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued*

officer under s. 5, it was open to the respondent to raise the objection on appeal at the hearing. KASTURI CHETTI *v.* DEPUTY COLLECTOR, BELLARY [I. L. R., 21 Mad., 269

159. ———— **Appeal from order of Judge under Land Acquisition Act (I of 1894) on reference by Collector as to disposal of compensation awarded**—*Court Fees Act (VII of 1870)* – In an appeal to the High Court from the order of the District Judge made upon a reference by the Collector under ss. 18 and 19 of the Land Acquisition Act, 1894, as to the disposal of compensation awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree. SHEO RATTAN RAI *v.* MOHRI I. L. R., 21 All., 354

[illegible]

from the decision of a dispute under s 322B of the Civil Procedure Code falls directly within the exception of art. 11, sch, II of the Court Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an *ad valorem* stamp *Srinivasa Ayyangar* v *Pria Tambi Nayakar, 1 L R., 4 Mad , 420,* dissented from AHMAD KHAN *v.* MADHO DAS [I. L. R., 7 All., 565

161. ——— – **Appeal in partition suit**—*Court Fees Act, sch II, art. 17, cl. 6—Stamp on memorandum of appeal in partition suit.*—The stamp fee payable on appeals to the High Court in suits asking for "partition, the separation of a share, and for khas possession of that share after separation," is that leviable under art VI, cl 17, sch II of the Court Fees Act. For the purpose of [illegible]

See BADYANATH ADYA *v.* MAKHAN LAL ADYA [I. L. R., 17 Calc., 680

162. ———— **Appeal from decree for possession disallowing perpetual character of leases.**—A suit for possession of certain lands [illegible]

Held that, as the value of the claim would be the difference in the value of the land as held under a mirasi tenure at a fixed rent, or an ordinary tenure at a fluctuating rent, and as this might be an extremely difficult calculation, the stamp fee upon the appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of his claim KEBUL RAM MUNDUL *v.* WELLS . . . . 24 W. R., 454

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

163. ———— **Appeal from decree in suit for possession and mesne profits**—*Mesne profits to be determined in execution of decree —Valuation of appeal against decree* – In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit. The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal for the purposes of the Court Fees Act, nothing was included on account of the mesne profits. *Held* that no stamp duty was payable in respect of the mesne profits subsequent to the institution of the suit. MAIDAN *v.* JANAKIRAMAYYA . . . I. L. R., 21 Mad , 371

See RAMAKRISHNA BHIKAJI *v.* BHIMABAI [I. L R., 15 Bom., 416

164. ———— **Appeal under cl 10 of Letters Patent, High Court, N.-W. P., from an order of remand under s. 562 of the Code of Civil Procedure**—*Court Fees Act (VII of 1870), sch. ii, art. 11*—*Held* that in an appeal under s. 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s 562 of the Code of Civil Procedure the proper Court-fee is R2 BALLI RAI *v.* MAHABIR RAI . . I. L. R., 21 All., 178

165. ———— **Appeal under Agency Rules, No. 22, under Act XXIV of 1839**—*Court Fees Act (VII of 1870).*—An appeal preferred to His Excellency the Governor in Council under Rule No. 22 of the Agency Rules framed under Act XXIV of 1839 against the decision of the Governor's Agent at Vizagapatam and referred by Government to the High Court for disposal is not chargeable under the Court Fees Act. REFERENCE UNDER COURT FEES ACT, s 5 [I. L. R., 22 Mad., 162

166. ———— **Appeal in suit to enforce a right of pre-emption**—*Appeal by purchaser —Court-fee—Act VII of 1870 (Court Fees Act), s. 7 (v) and (vi).*—Where, in a suit to enforce a right of pre-emption, a decree was passed against the vendees-defendants, and they appealed from the same on the grounds that they were entitled to receive from the plaintiffs-pre-emptors a sum larger than that found by the Court of first instance to have been the purchase-money, and also that the plaintiffs had estopped themselves from asserting the right by refusing to purchase,—*Held* that the nature of the suit was not changed in appeal, and that, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption the value of which, for the purposes of Court-fee, was to be determined in manner directed by s. 7, cl (vi), of the Court Fees Act, VII of 1870. *Ram Lakhan Rai v. Bandan Rai* distinguished Where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

matter what other pleas may be taken, the value of the subject-matter in dispute, for the purposes of the *Court Fees Act, must be determined as in terms* provided in art. (*vi*) of s 7 of the Act. Where the question in appeal relates solely to the amount to be paid by the pre-emptor, the Court-fee should be calculated *ad valorem* on the difference between the amounts alleged as the sale price on the one side and the other HAFIZ AHMAD *v.* SOBHA RAM [I. L. R., 6 All., 488

167.——— Appeal in suit for redemption—*Court Fees Act (VII of 1870), s 7, cl. 9—Madras Civil Courts Act (Mad. Act III of 1873), s. 13 Suits Valuation Act (VII of 1887), s 11—District Judge, Jurisdiction of.*—In a suit in the Court of a Subordinate Judge to redeem certain land on payment of R1,625 being a quarter of a debt for which it had been mortgaged together with other land, a

appealed to the High Court paying *ad valorem* Court-fees computed on the value of the land exonerated only. *Held* (1) that the *ad valorem* Court-fees should be computed on one-fourth of the mortgage-debt, (2) that the appeal lay to the District Court, and since Act VII of 1887, s. 11, did not apply to the case, the petition of appeal should be returned for presentation in that Court. VASUDEVA *v.* MADHAVA I. L. R., 16 Mad., 326

168. ——— *Court Fees Act (VII of 1870), s 17—Claim by mortgagor for rent in same suit—Court-fee on appeal*—A suit to redeem a mortgage for R3,500 and to recover a certain sum on account of rent was dismissed so far as the prayer for redemption was concerned, and also part of the claim for rent was disallowed It did not appear that the arrears of rent were intended to be set off against the mortgage debt. The plaintiff appealed. *Held* that the Court-fee should be computed on the principal amount of the mortgage debt and on the claim which had been disallowed on account of rent RAMA VARMA RAJAH *v* KADAR . I. L. R., 16 Mad., 415

169. ——— Appeal in suit for redemption of usufructuary mortgage—*Bengal Civil Courts Act (VI of 1871), s 22*—The plaintiffs sued for the possession of certain immoveable property, alleging that they had mortgaged such property to the defendants, and that the mortgage-debt had been satisfied out of the profits of the property The defendants set up a defence to the suit which raised the question of the proprietary right of the plaintiffs to the property The value of

suit, it was contended that the appeal from that decree lay to the District Court and not to the High Court. *Held* that the "subject matter in dispute,"

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

Second Appeal No 1039 of 1877 dissented from. GOBIND SINGH *v* KALLU I. L. R., 2 All., 778

170 ——— Appeal from decree making property liable for mortgage-debt—*Court Fees Act (VII of 1870), s. 6, sch. II, art 17*—In a suit on a mortgage-bond a decree was passed for payment of principal and interest, and in default for sale of the mortgaged property. Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of R10 only. *Held* that the proper stamp to be paid was not R10 as in the case of a declaratory decree, but on the value of the debt not exceeding the value of the property. VENKAPPA *v* NARASINHA I. L. R., 10 Mad., 187

171 ——— Appeal from decree for ejectment and mesne profits—*Court Fees Act (VII of 1870), s 7—Court-fee on memorandum of appeal*—A memorandum of appeal from a decree directing ejectment and awarding mesne profits is chargeable with Court-fees calculated both on the land and on the mesne profits. BRAHMAYYA *v.* LAKSHMINARASIMHAM [I. L. R., 16 Mad., 310

172. ——— Appeal in suit for ejectment—*Claim by tenants for improvements of greater value than plaint valuation—Appeal by tenants for improvements—Court fees payable on such appeal.*—In a suit for ejectment, in which the plaint land was valued at R50 and court-fee paid on that valuation, the tenants claimed R500 as compensation for improvements, which claim was disallowed The tenants appealed on the ground that their claim for improvements should have been allowed, but only paid Court fee on the plaintiff's valuation. On a reference as to whether the value of the improvements ought not to be taken into account for the purpose of levying the Court-fee,—*Held* that, as the claim for improvements was not the subject-matter of the suit, but was merely

173. ——— Appeal, Memorandum of, under Bengal Tenancy Act (VIII of 1885), s. 108, cl. 3—*Court Fees Act (VII of 1870), sch. II, art. 17, cl. 6.*—The Court-fee payable on a memorandum of appeal presented to the High Court under s. 108, cl 3 of the Bengal Tenancy Act of 1885 is that prescribed by art. 17, cl 6, of sch. II of the Court Fees Act PETU GHORAI *v.* RAM KHELAWAN LAL THUKUT I. L. R., 18 Calc., 667

174. ——— Court-fees stamp on memorandum of second appeal to High Court from decision of District Court on appeal

VALUATION OF SUIT—*continued.*

2 APPEALS—*continued.*

from Talukhdari Settlement officer—*Court Fees Act (VII of 1870), sch. II, art. 1, and sch. I, art. 1—Application for execution of decree for partition—Gujarat Talukhdars Act (Bom. Act*

sch. I. but is an application falling under art. 1 of sch. II of the Court Fees Act (VII of 1870). The Court-fee stamp of R2 should therefore be affixed to the memorandum of appeal JAMSANG DEVABHAI v. GOYABHAI KIKABHAI I. L. R., 16 Bom., 408

175. ——— Appeal from decree payable by instalments—*Court Fees Act (VII of 1870), s 16, and sch. I, art. 1—Court-fee on appeal from decree granting partial relief.*—The Court-fees which an appellant has to pay on a memorandum of appeal from a decree which gives him only partial relief are to be calculated upon the difference between the value of the relief which he claims and the relief granted by the decree appealed against. Where a decree was made payable by three instalments and the plaintiff appealed on the ground that it should not have been made so payable,—*Held* that the Court-fee should be calculated upon the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree LUKHUN CHUNDER ASH v KHODA BUKSH MONDUL I. L. R., 19 Calc., 272

176. ——— District Judge, Jurisdic-

to be taken, that is the value of the subject-matter

177. ——— *Madras Civil Courts Act (Mad. Act III of 1873), s 12—Valuation of relief—Suit for partition.*—In an appeal against a decree of a Subordinate Judge dismissing a suit brought by the members of one Nambudri illom against the members of another for partition and delivery of a moiety of the property of an extinct illom, it appeared that the value of the share claimed was less than R5,000. *Held* that the appeal lay to the District Court. *Krishnasami* v. *Kanakasabai*; *I. L. R., 14 Mad., 183*, followed. NARAYANAN v. NARAYANAN [I. L. R., 15 Mad., 69

178. ——— *Madras Civil Courts Act (III of 1873), s. 13—Civil Procedure Code (Act XIV of 1882), s. 331.*—The plaintiff,

... a decree in favour of

Judge, and not to the High Court. KALIMA v. NAINAN KUTTI. MAHOMED v. NAINAN KUTTI [I. L. R., 13 Mad., 520

179. ——— *Suits Valuation Act (VII of 1887), s 8—Valuation for purposes of Court-fees and for purposes of jurisdiction—Suit for account.*—In a suit for an account the valuation entered in the plaint for the purpose of fixing Court-fees determines the question of juris-

180. ——— *Suits Valuation Act (VII of 1887), s. 8—Suits for account*—

the amount of claim as fixed by the plaintiff. In

... to have accounts taken ...

against an order rejecting the plaint ... lay to the District Court. The appeal was therefore returned for presentation in the proper Court. BAI AMBA v. PRANJIVANDAS DULLABHRAM [I. L. R., 19 Bom., 195

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

181. ———— *Suits Valuation Act (VII of 1887), s. 8—Suit for account—Court Fees Act (VII of 1870), s 7 (iv), cl (f), and s. 11—Bombay Civil Courts Act (XIV of 1869), s 26.*—In a suit for an account of partner-

Court Fees Act (VII of 1870). The defendants

matter of the suit exceeded R5,000, the appeal therefore lay to the High Court under s. 26 of Act XIV of 1869. IBRAHIMJI ISSAJI *v* BEJANJI JAMSEDJI . . I. L. R., 20 Bom., 265

182. ———— *Bombay Civil Courts Act (XIV of 1869), s 26—Administration suit—Suit filed in second class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree.*

alia) that the defendant should pay this amount into Court within two weeks Against this order

District Court SHET KAVASJI MANCHERJI *v.* DINSHAJI MANCHERJI I. L. R., 22 Bom., 963

183. ———— *Court Fees Act*

defendant, but not on the second defendant. The

184. ———— *Suit for ejectment—N.-W. P. Rent Act, s. 93, cl (h)—General Clauses Act (I of 1887), s 39, cl. (13)—Subject-*

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint *Ram Raj Tewari* v. *Girnandan Bhagat, I L. R., 15 All., 63*, distinguished. *Mahabir Singh* v. *Behari Lal, I. L. R., 13 All., 320*, referred to. RADHA PRASAD SINGH *v.* PATHAN OJAH [I. L. R., 15 All., 363

185. ———— *Court Fees Act (VII of 1870), s 10, cl. 2, s. 12, cl 11, sch II, art 17, cl. 6—Order in appeal by defendant for payment*

186. ———— *Judge on appeal dealing with valuation of suit irregularly—Ap-*

Court of a District Munsif The suit was valued at R489 8 0. Defendant 4, who claimed to be entitled

against the above order and decree,—*Held* that the

[I. L. R., 15 Mad., 181

187. ———— *Suit for declaration of title and for injunction—Consequential relief—Court Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of 1887), s. 8.*—Where plaintiffs sued for a declaration that they were entitled to share in certain talukhdari estates and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted for an order to defendant to

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for

in the nature of consequential relief. GULAB SINGJI v. LAKSHMANSINGJI I. L. R., 18 Bom., 100

188. ———— *Suit for injunction and specific performance — Suits Valuation Act (VII of 1887), s. 8 Court Fees Act (VII of 1870)—Valuation for purposes of jurisdiction.*— The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the plaintiff valued his claim at R664 for the computation of Court-fees, and at R14,000 for purposes of

189. ———— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 21, sub-s. (1)—"Value of the original suit."*— Where the value of a suit was found by the lower Court to be less than R5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation of R7,500 made in his plaint,—*Held* that the words "value of the original suit" in sub-s. (1), s. 21 of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887) did not

Babaji Bhatkar, I. L. R., 8 Bom., 31, and *Mahabir Singh v. Behari Lal, I. L. R., 13 All., 320*, approved. NILMONY SINGH v. JAGABANDHU ROY [I. L. R., 23 Calc., 536

190. ———— *Court Fees Act (VII of 1870), s. 16, and sch. II, art. 71, cl. iii—Declaratory decree, Suit for—Consequential relief—Right of priest to charao (offerings to idol)—*

passed a decree for the arrears, but refused to make

Mad., 187, and *Vithal Krishna v. Balkrishna Janardan, I. L. R., 10 Bom., 610*, distinguished. GIRIJANUND DATTA JHA v. SAILAJANUND DATTA JHA . . . I. L. R., 23 Calc., 645

191. ———— *Fee payable on appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by*

obtained by fraud, coercion, undue influence, and without consideration. The suit had been originally valued by plaintiff at R800, but by an order of the

payable on such appeal. *Held* that s. 7 (iv) (c) of the Court Fees Act applied, and that the valuation given by the plaintiff was the valuation to be accepted. Whether the reference to an appeal in the sub-section applies to a case in which the subject-matter of the appeal is not co-extensive with the subject-matter of the suit—*Quære. Karam Khan v. Daryai Singh, I. L. R., 5 All., 331*, considered. SAMIYA MAVALI v. MINAMMAL [I. L. R., 23 Mad., 490

192. ———— *Memorandum of appeal to Special Judge under Bengal Tenancy Act—Court Fees Act (VII of 1870), ss. 12 and 17, sch. II, art. 1, cl. (b), part II, art. 17, cl. (vi)—Bengal Tenancy Act, s. 104, cl. (2), s. 108, cl. (2), and s. 189—Joinder of parties in one application—Rule 25 of Rules of Government of India under Bengal Tenancy Act.*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy

decision.
spondents.
Judge, on

under the Act by

Special Judge did not dispose of any question relating to valuation, far less of any question relating to the valuation of a suit, and the decision was not final under s. 12 of the Court Fees Act; and that the proceedings in this case could not properly be regarded as a suit, and neither art. 17, cl. vi, of sch. II

VALUATION OF SUIT—*continued.*

2 APPEALS—*continued.*

s 17 of the Court Fees Act was applicable The memorandum of app al was nothing more or less than an application subject to one Court fee of eight annas only under art 1, cl (o), part II of sch II of the Court Fees Act The case of *Petu Ghorai v Ram Khelawan Lall Bhakut, I. L R, 18 Calc, 667*, was wrongly decided. UPADHYA THAKUR v. PERSIDH SINGH . . I. L. R., 23 Calc, 723

193 —— —— *Court Fees Act (VII of 1870), sch. I—Relief in respect of costs—Distinct relief*—When apart from, and indepen-

decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first schedule of the Court Fees Act IN RE MAKKI IN RE RAMAN I. L. R, 19 Mad., 350

194. —— —— —— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Appeal from decree granting two distinct declarations.*—A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a

the officer appointed under s. 5 of the Court Fees Act, "Report will be made on receipt of record" The Judge made an order, "Admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register On the 27th September 1888 the office reported that there was a deficiency in the stamp of R615, on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th

as to the merits of which the Court could give a decision *Held* also that the stamp of R10 was insufficient inasmuch as two distinct declarations were asked for and obtained, and were by the appeal sought to be set aside, and it was not the province of the taxing officer or of the Judge or Court on a question of the sufficiency of a stamp or fee to consider whether a plaintiff or an appellant was asking for more declarations or reliefs than were required for his protection BAIKARAN RAI v. GOBIND NATH TIWARI . I. L. R., 12 All., 129

VALUATION OF SUIT—*concluded.*

2. APPEALS—*concluded*

195. —— —— *Decree for re-*

passed on payment of a certain amount, and the

redemption on payment of a certain sum, and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum, the Court-fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due PIRBHU NARAIN SINGH v. SITA RAM I. L. R., 13 All., 94

VALUE OF PROPERTY.

—— Statement in will as to—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS I L. R., 1 Bom., 561

VARIANCE BETWEEN PLEADING AND PROOF.

See APPEAL—GROUNDS OF APPEAL. [I. L. R., 15 Mad., 503

See APPELLATE COURT — EXERCISE OF POWERS IN VARIOUS CASES—PLAINT. [I. L. R, 19 Bom, 303

See CASES UNDER ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION. [I. L. R., 21 Bom., 110

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY. [I. L. R., 18 Bom., 611

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENERS I. L. R, 20 Mad., 243

See CASES UNDER ISSUES—FRESH OR ADDITIONAL ISSUES.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO SUIT. [I. L. R., 17 Bom., 631

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

See CASES UNDER PLAINT—AMENDMENT OF PLAINT.

See RELIEF . I. L. R., 15 Mad., 489
[I. L. R., 19 Bom., 323

See TITLE — EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.
[I. L. R., 2 Calc., 418

See WRITTEN STATEMENT
[I. L. R., 1 Bom., 209

1. GENERAL CASES.

1. ——— Decision on point not raised in pleadings or issues.—A plaintiff must recover *secumdum allegata et probata*, and no decree should be given in his favour on a point not raised in the pleadings nor embodied in an issue. JOYTARA DASSEE *v.* MAHOMED MOBARUCK
[I. L. R., 8 Calc., 975: 11 C. L. R., 399

JANKEE *v* JHANJOO . . 2 N. W., 407

MOOKTAKESHEE DEBEA *v* COLLECTOR OF BURDWAN . . . . 12 W. R., 204

TARA CHAND ROY *v.* NOBIN CHUNDER ROY
[21 W. R., 132

PROTAB CHUNDER BOROOAH *v.* COLLECTOR OF GOWALPARA . . . 22 W. R., 216

2. ——— Basis of decision of case—

11 Moore's I. A., 7, referred to. MYLAPORE IYASAWMY VYAPOORY MOODLIAR *v.* YEO KAY
[I. L. R., 14 Calc., 801
L. R., 14 I. A., 168

3. ———

APPAYYA *v.* RAMIREDDI . I. L. R., 11 Mad., 367

4. ——— Amendment of case—*Mistake or misapprehension.*—A plaintiff can be allowed to amend his case only when he has an honest case, but either through mistake or some misapprehension he has not placed the real facts before the Court. BHYRO DUTT *v.* LEKHRANEE KOOER
[18 W. R., 123

5. ——— *Civil Procedure Code, 1859, Operation of, as compared with old procedure in equity.*—Under the Civil Procedure Code

Bourke, A. O. C., 45

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

1. GENERAL CASES—*continued.*

6. ——— Variance in plaint—*Dismissal of suit, Ground for.*—*Held* by a majority that the Code of Civil Procedure does not require the dismissal of a suit by reason of any variance in the plaint. MAHOMED REEZAOODEEN *v.* HOSSEIN BUKSH KHAN . . . . 1 W. R., 300

7. ——— Raising issues after variance is shown.—A plaintiff will not be allowed to set up one case, and, having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues, and to give the relief thereon to which the plaintiff is entitled. OBHOYCHURN MULLICK *v.* WOOMES CHUNDER PAUL . 2 Hyde, 263

8. ——— Proof of cause of action not alleged—*Dismissal of suit, Ground for—Claim on one cause of action, evidence showing another.*—

9. ——— Amount proved exceeding

v. JARDINE, SKINNER & Co. . . . Cor., 118

10. ——— Presumption from failure to prove allegations—*Onus of proof*—An ad-

11. ——— Failure to prove precise case pleaded—*Decree, Right to.*—A previous ruling in *Beejoynath Chatterjee* v. *Lukhee Monee* ... that a

CHUNDER DEB

12. ——— Suit for possession alleging

[3 C. W. N., 325

13. ——— Right to make party liable in different character—*Suit against party personally—Representative's liability.*—In a suit to recover advances made to the defendant to carry on an

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

1 GENERAL CASES—*concluded*

14. Unestablished defence-

15. ——— Defence not set up by defendant—*Inconsistent defence.*—It is not compe-

RADHA BINODE DUTT *v.* KOOTABODE MUNDUL [15 W. R., 363

CHITTRA COOMARY BEBEE *v.* RAM LALL MOOKERJEE . . . 18 W. R., 334

RAJARAM BANERJEE *v.* SONATUN ROY [23 W. R., 404

2. SPECIAL CASES.

16. ——— Account, Suit for balance of—*Failure to prove balance alleged—Issues—Civil Procedure Code, 1859, s. 141*—*Held,* in contra-

between the parties, ought to enter into evidence regarding the items composing the account, and decree the claim regarding such items, if they are found to be due and not otherwise barred. KISHUN PERSHAD *v.* BHAWANEE DEEN [Agra, F. B., 47 : Ed. 1874, 35

RAMSAHOY *v.* SEETHOO [1 N. W., 28 : Ed. 1873, 26

But where the issues had been framed solely on the alleged adjustment, the suit was held to be rightly dismissed NOBIN CHUNDER KOONDOO *v.* SREEDHUR BHUTTACHARJEE . 15 W. R., 24

17. ——— Accretion—*Gradual accretion to a formation of dry land already existing, and*

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

appropriated to an owner of land, on a river's bank—The ownership of the bed of the river was not the subject of contest below—Variation of claim disallowed.—Although there is not in Madras, as there is in Bengal, an express law embodying the principle that gradual alluvion enures to the land to which the accretion is made, following the ownership of that land, the rule is equally well established in both those provinces. Both parties were riparian proprie

river

newly

to hav

existing lanka or alluvial island which belonged to her On that point there were concurrent findings against her. The accretion had taken place upon a lanka owned, not by her but by the Government, and higher up stream than hers. *Held* that the

v. COLLECTOR OF THE GODAVARI DISTRICT [I. L. R., 22 Mad., 464
L. R., 26 I. A., 107

18. ——— Alienation, Suit to set aside—*Variance between case in plaint and evidence—Raising ground not taken in plaint.*—The plaintiff,

raised a new ground, *viz.*, that the alienation was bad, because under the Mitakshara law the owner of

19. ——— Alleged inconsistency in pleadings—*Construction of solehnama—Estoppel—Objection taken for first time on appeal.*—After the death of a Hindu widow, a suit was brought to

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

defendant was allowed to raise the same objection to the suit as he might have taken had it been brought

L. R., 19 I. A., 221

20. ——— *Failure to prove case—Raising fresh case on appeal.*—In a suit to set aside a sale of ancestral property by a minor's father and guardian as made without necessity and for the father's profligate expenditure, and without inquiry by the purchasers as to whether it was for the infant's benefit, the defendants alleged that the sale was made under pressure of a foreclosure suit on

KHAJOO *v.* AMATOOL MEHDEE BEGUM [17 W. R., P. C., 106

21. ——— Company—*Contributories, List of—Amendment of plaint.*—Where the holder of shares in a company was described in the list of con-

who alone was alleged to have signed the articles and memorandum of association in the name of Debji Bhanji, and to make him personally liable as the holder of the shares *Weikersheim's Case, L. R., 8 Ch Ap., 831,* distinguished LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI [I. L. R., 2 Bom., 116

22. Compromise—*Failure to prove case—Right to succeed on ground not alleged.*—

appeal that the document was invalid as being un registered, declaring that it did not affect his interests MADHUB ALI KHAN *v.* HOSSAIN REZA KHAN [4 C. L. R., 52

23. ——— Contract—*Assumption of facts Decision on.*—The determinations in a cause should

[2 Ind. Jur., N. S., 87: 6 W. R., P. C., 57 11 Moore's I. A., 7

Followed in DOSS RAM DOSS *v.* MOHENDRO ROY DECHA . 18 W. R., 274

24. ——— *Issues—Amendment of plaint—Variance between case in plaint and evidence*—The plaintiffs sued the defendants for damas
plaint th
dants to
defendan

25. ——— Ejectment, Suit for—*Failure to prove lease—Reliance on general title, Right of—Case stated in plaint*—Where a lessor sues to

plaint, but he may put forward all ... in his plaint from the commencement, as the defendant then will know that he has more than one case to meet, and will not be taken by surprise. LAKSHMIBAI *v.* HARI BIN RAVJI . . . 9 Bom., 1

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

26. ———————— *Suit for ejectment against defendant as tenants and on failure as trespassers—Case set up in appeal which was not that set up in the Court of first instance*—The plaintiff came into Court on the allegation that she was the owner of a certain house, and that the defendants were her tenants at a certain rent, and she sought to eject the defendants for non-payment of rent. The Court of first instance having found her allegations of tenancy to be untrue, she then in appeal endeavoured to support a plea that the defendants were trespassers, such plea having formed no part of the original case. *Held* that the plaintiff could not under the circumstances be heard in sup-

27. ———————— *Suit for ejectment of defendants as trespassers—Decree declaring right to rent as landlord*—In a suit to eject

that the entire suit ought to have been dismissed, inasmuch as the defendants were not found to be

GOPI MOHUN ROY CHOUDHRY 2 C. W. N., 166

28 ———————— *Title to relief completed pending a suit—Amendment of plaint*—*A*, having leased land to *B*, sold it to *C*. Persons having trespassed, *B* offered no objection, and it was alleged that he was in collusion with them. *C* now sued before the expiry of the lease to eject the trespassers; the lease expired while the suit was still pending *Held* that the plaintiff was not entitled to the relief sought, and could not be permitted, on appeal, to amend the plaint by adding a prayer for a declaration of his reversionary right, although the acts of the defendants were such as to be prejudicial to his rights as reversioner. RAMANADAN CHETTI *v* PULIKUTTI SERVAI

[I. L. R., 21 Mad., 288

CHORDAS AMTHABHAI *v.* MANEKLAL GORDHANDAS

[I. L. R., 17 Bom., 648

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

30. ———— Fraud—*Failure to prove specific*

31. ———————— *Compromise by official assignee—Insolvent Act, 11 & 12 Vict, c 21, ss. 28 and 29—Charges with a view to establish fraud—Practice—Pleading—Amendment of pleading—Restriction of power to amend.*—The account of an estate formerly in the hands of a derivative executor who became insolvent and died in 1856, having been pending in Court for many years, some of the parties being interested in the

consent of parties in 1875 Part of a sum of money, paid to the credit of the insolvent's estate in

the latter, he being now deceased, the successor in office of the assignee claimed repayment. The

the payment being a fraud upon the Court. *Held* that the amendment at the stage when it was made was not permissible It is a well-known rule that a charge of fraud must be substantially proved as laid, and that, when one kind of

ABDUL HOSSEIN ZENAIL *v.* TURNER

[I. L. R., 11 Bom., 620
L. R., 14 I. A., 111

32. ———— Hathchitta, Suit on—*Hathchitta given for amount of adjusted account*—

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2 SPECIAL CASES—*continued.*

original debt. GOSSAIN RAM KISSEN *v.* MIAH JAN SHEIK . . . 1 C. W. N., 710

33. ——— Mortgage—*Suit for redemption—Decree on mortgage set up by defendants and not on that alleged by plaintiff*—In a suit to redeem, the plaintiff produced a mortgage ...

for the restoration of the lands according to the terms of the mortgage produced by the defendants The Civil Judge reversed the decision *Held* on special ...

[4 Mad., 359

34. ——— *Suit for redemption—Evidence given of other mortgage than the* ...

defendants in 1823 At the hearing the deed of mortgage in respect of which the suit was brought was produced, but another mortgage of about the same date was produced and proved by the plaintiff. The lower Courts passed a decree for the plaintiff. The defendants appealed. *Held* (reversing the decree of the lower Courts) that where a particular instrument ...

Evidence Act, I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such an entry as facts in another case GOVINDRAV DESHMUKH *v* RAGHO DESHMUKH

[I. L. R., 8 Bom., 543

35. ——— *Change of nature of suit.*—The plaintiff sued to redeem a mortgage, alleging that it was made in the ...

defendant, but that the suit was not time-barred, as the mortgagor's title had been acknowledged by the mortgagee within the period of limitation. He accordingly made a decree for redemption on terms consistent with the plea of the defendant, but opposed to that of the plaintiff. On appeal, the Assistant Judge agreed with the first Court as to the merits of the case, but reversed its decree on the ground that the plaintiff was not entitled to succeed on a state of facts inconsistent with the case set forth in the plaint, observing that a plaintiff ought not to be allowed to change his cause of action. *Held* by the High Court, on second appeal, that the decree made by the first Court in ...

proceed ...

made in ...

remained the same, namely, the right of the mortgagor to redeem from a mortgagee. A plaintiff ought not to be allowed to alter his case so as to convert a suit of one character into a suit of another and inconsistent character. LAKSHMAN BHISAJEE *v* HARI DINKAR DESAI . . I. L. R., 4 Bom., 584

36. ——— *Alteration of case from that made in plaint.*—Upon a mortgage of land made little less than sixty years before the present suit, a decree followed in 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and ... that the land should be restored.

decided in the Courts below. Accordingly, the suit had been properly dismissed. HARI RAVJI CHIPLUNKAR *v.* SHAPURJI HORMASJI SHET

[I. L. R., 10 Bom., 461

37. ——— *Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of other mortgage than the mortgage in respect of which suit brought—Right of* ...

for the larger sum as alleged ... On second appeal,—*Held*, reversing the decree and remanding the case, that the plaintiff was entitled to have the question of the mortgage for the larger sum inquired into. CHIMNAJI *v.* SAKHARAM

[I. L. R., 17 Bom., 365

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued*

38. ———— *Cause of action set out in plaint—Burden of proof—Civil Procedure Code (1882), s. 50—Suit for redemption of mortgage.*—A plaintiff is only entitled to succeed

title in favour of the defendant and seeking to redeem the mortgage of 1854, and it was found that the plaintiffs had failed to prove the mortgage of

Read v. Brown, L. R., 22 Q. B. D., 128, Murti v.

Ragho Deshmukh, I. L. R., 5 Bom., 615, and *Eshenchunder Singh v. Shamachurn Bhutto, 11 Moore's I. A., 7,* referred to. *Lakshman Bhisaji Sirsekar v. Hari Dinkar Desai, I. L. R., 4 Bom., 584,* and *Chimaji v. Sakharam, I. L. R., 17 Bom., 365,* dissented from. SHEO PRASAD v. LALIT KUAR . I. L. R., 18 All., 403

39. ———— *Mortgage sued on not proved—Admission by defendants of mortgage right—Right of redemption.*—The plaintiff sued to redeem a kanom of 1859. The kanom was not proved, but it appeared that the defendants in possession had in various documents admitted that they were kanomdars under the plaintiff's predecessor in title. The Subordinate Judge held that the kanom to which

40. ———— *Mortgage sued on inadmissible in evidence for want of registration — Secondary evidence — Inadmissible mortgage, consolidating two prior mortgages—Redemption, Right of—Decree to redeem prior mortgages.*—In

decree on the footing of the unregistered mortgage which could not be proved, but that he was entitled to redeem the two previous mortgages if they were found to be genuine and valid. ARUMUGAM PILLAI v. PERIASAMI . . I. L. R., 19 Mad., 160

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

41. ———— *Suit for redemption of immoveable property brought as donee—Title of plaintiff as reversioner.*—In a suit for the redemption of immoveable property brought by the plaintiff as donee from a Hindu widow of the equity of redemption, the plaintiff's right to the property as reversioner cannot be inquired into notwithstanding an allegation in the plaint that he was a near relative of the husband of the donor. JAGANNATH VITHAL v. APAJI VISHNU . 5 Bom., A. C., 217

42. ———— *Procedure.*—Where a mortgagor sues to recover possession of the mortgaged property on the ground that the loan has been paid off from the assets of the estate, and that he is entitled to recover surplus collections, and the Court

LAL . . . 8 W. R., 369

But see BOISTUB DOSS KOONDOO v. HURO NARAIN HALDAR . . . . 17 W. R., 408

43. ———— *Usufructuary mortgage—Failure of claim to enforce lien—Compensation for breach of contract to give mortgagee possession.*—A usufructuary mortgagee, the mortgagor having broken his agreement to give him

terest at the rate specified in the contract of mortgage might fairly be taken as a reasonable guide. MAHESH SINGH v. CHAUHARIA SINGH I. L. R., 4 All., [illegible]

44. ———— *Usufructuary*

The instrument of [illegible] hypothecation of the [illegible] the suit, so far as it [illegible] wholly failed, there [illegible]

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

property yet it was not equitable or proper that. as regards the money-claim, the mortgagee should be relegated to a fresh suit, inasmuch as a cause of action was disclosed, whether the suit was regarded as one for compensation in damages for breach of contract, or for money had and received for the plaintiff's use, or for money lent, and the suit should be determined on its merits. SHEO NARAIN *v.* JAI GOBIND . . . . I. L. R., 4 All., 281

45. ——— Partition—*Failure of suit—Right to declaration of share.*—Where the main object of a suit framed and valued as a suit for partition of a portion of the estate fails, the plaintiff is not entitled to turn round and ask for a declaration as to the extent of his share. RUTTUN MONEE DUTT *v.* BROJO MOHUN DUTT . . 22 W. R., 333

Affirming S C. . . . 22 W. R., 11

46. ——— Possession—*Moveable property—Making different case on appeal.*—In a suit for delivery over to plaintiff of papers said to be in the possession of defendant, the answer of the latter was that he had made over the papers to the plaintiff's son. This plea was put in issue in the first

plaintiff's son was a receipt by him as plaintiff's agent. *Held* that this point was a departure wholly from the case made below, and ought not to have been entertained on appeal. PUNCHANUN ROY *v.* THOTLUCKHOMOHINEE DOSSEE . 14 W. R., 466

47. ——— *Immoveable property—Separate acquisition.*—*Held* that the question of possession was not a proper one for deci-

48. ——— Possession, Suit for—*Accrual of cause of action—Limitation.*—In a suit by an execution-purchaser to recover possession of land

of action alleged in his plaint, so long as that arose within twelve years before commencement of the suit. MARIAM BEGUM *v.* RYE CHURN DUTT [13 W. R., 269

49. ——— *Misdescription as to situation of lands—Identification.*—Where lands claimed under a certificate of sale as being in one village are found to be in another, it is open to the plaintiff to show that there has been a misdescription, and that, although the name of the former was used, the intention was to convey the lands he claimed

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

situate in the latter. RAMGOPAL BARICK *v.* SHIB PERSHAD SIRCAR . . . 12 W. R., 483

50. ——— *Failure to prove*

right to have a judicial determination of his claim to occupancy. BYDNATH SHAHA *v.* JADUB CHUNDER SHAHA . . . . . 3 W. R., 208

51. ——— *Suit for possession on specific title—Right of occupancy.*—A

52. ——— *Decree on ground not alleged in plaint.*—The plaintiff sued for a

defendant. *Held* that the lower Court was in giving the plaintiff a decree for possession on the ground of occupancy right, he not having claimed such relief in his plaint. *Bijoya Debia v. Bydonath Deb, 24 W. R., 444,* followed. BRINDABUN CHUNDER SIRKAR *v.* DHUNUNJOY NUSHKUR [I. L. R., 5 Calc., 246: 4 C. L. R., 443

53. ——— *Adverse possession*—

sion

land,

The

proved the title he alleged, and although it had been contended at the hearing that a title by twelve years' adverse possession had been proved, the Court held that it was not proved, and that, as it was not alleged in the plaint and no issue was raised

defendant appealed to the High Court, it was not contended on his behalf that the plaintiff was not

decree of that Court should be confirmed

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

Delia v. Bydonath Deb, 24 W. R., 444, and *Shiro Kumari Debi v. Govind Shaw Tanti, I. L. R., 2 Calc., 418,* distinguished. *Joytara Dassee v. Mahomed Mobaruck, I. L. R., 8 Calc., 975,* discussed. SUNDURI DASSEE *v.* MUDHOO CHUNDER SIRCAR

[I. L. R., 14 Calc., 592

54. ———————— *Relief granted on a different ground from that asked for.*—Plaintiff's suit was that they were co-owners with *B* of a certain property as members of a joint family under the Mitakshara law; that after *B*'s death a 3½ annas share of the property was registered under the Land Registration Act in the name of *A*, the mother of *B*, although the plaintiffs were the owners in possession, and *A* was entitled only to maintenance; that a gift was made of 1½ annas share by *A* to her daughter and daughter's son, without right, and the donees having granted a zur-i-peshgi lease in respect of that share, the zur-i-peshgidars took possession thereof. The plaintiffs accordingly prayed for recovery of possession by establishment of their alleged right of owner-

B as alleged, but that, as reversionary heirs, they became entitled to possession upon *A*'s death after the institution of the suit. *Held* that, as the plaintiffs had claimed to recover possession in the suit, and

55. ———————— *Defendant sued as a trespasser—Right to decree against him as a*

56. ———————— *Failure to prove*

LALJEE SINGH *v.* BUNWARY LALL ROY

[25 W. R., 448

57. ———————— *Failure to prove permanent character of tenancy—Right to decree as tenants.*—In a suit for possession of land on the strength of an alleged mirasi mokurari, one of the main issues was whether the plaintiffs were or were not tenants of the land in dispute, and upon this issue

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

it was found that the plaintiffs had acquired a title as tenants from long possession, although they failed to establish the mirasi mokurari character of their tenure. *Held* that the plaintiffs were entitled to a decree for possession. *Kalee Coomar Pattur v. Khettur Nath Baug, 17 W. R., 47,* and *Surjoo*

58. ———————— *Suit on ground of forcible dispossession where defendant's possession is found to be permissive.*—A suit to recover possession of land on the ground of forcible dispossession,

defendant with notice to quit the land, and thereby put an end to the permission relied upon by him. PHILLIPS *v.* NUNDCOOMAR BANERJEE

[8 W. R., 385

59. ———————— A plaintiff's failure

BOGA KOLITA *v.* THOOLESSUR KAYASTA

[24 W. R., 357

TORAB ALI *v.* MAHOMED AMEER HOSSEIN

[3 C. L. R., 105

60. ———————— *Suit for confirmation of possession—Proof that plaintiff was out of*

defendants and that he was in actual possession thereof, and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant. The Court of first instance found that the plaintiff's allegation of possession was false, and dismissed the suit. *Held,*

of such special circumstances no such assistance would be afforded. TEKAITPUT SINGH *v.* GOSSAIN SUDERSAN DAS . . I. L. R., 4 Calc., 46

61. ———————— *Failure to prove case in plaint—Right to decree on other grounds.*—At a sale held under Bengal Act VIII of 1865, the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2 SPECIAL CASES—*continued.*

the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Raja, had granted the lands in dispute as bramatar, but not in favour of the person through whom the plaintiff claimed The Court, however,

decree upon grounds other than those stated in the plaint. ISWAR CHANDRA CHUCKERBUTTY *v* BISTU CHANDRA CHUCKERBUTTY

[3 B. L. R., Ap., 97: 12 W. R., 32

62. — *Failure to prove case—Changing case on appeal* —Each of two proprietors, *A* and *B*, separately mortgaged the whole of the joint property to different persons. *B*'s mort-

house. DORSUN SAHOO *v* PEYAG RAM

[2 C. L. R., 538

63.— *Failure to show alternative case—Right to change case in special appeal.*—Suit for possession of certain property as part of a joint family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property

64. — *Joint claim*—

is established. RAM COMUL CHUCKERBUTTY *v.* NUND RAM COOLAL . . . 10 W. R., 262

SHEO NUNDUN PERSHAD *v.* MUKDOOM BUKSH

[20 W. R., 304

65. *Joint claim—Right to succeed on proof of title to less share separately* —A plaintiff, suing on the ground that she was jointly entitled, was not allowed to succeed in the suit where it was shown she was only entitled to a less share in her own separate right. HURRO MONEE DOSSEA *v.* ONOOKOOL CHUNDER MOOKERJEE

[2 W. R., 461

66. — *Claim to exclu-*

SREENARAIN CHUCKERBUTTY *v.* MILLER

[15 W. R., O. C., 7

67. — *Claim to separate possession—Proof of joint possession—Alteration of claim.*—When a plaintiff who claims property on the allegation that he purchased it from a person to whom it exclusively belonged, fails to prove that the property was the separate property of his vendor, he cannot have a decree for the share of the property to which his vendor was entitled as a member of a joint family. GOUR BEHAREE RAM BHUGUT *v.* SHEORUTTUN KOONWAR . 10 W. R., 243

68. — *Suit for exclusive possession—Joint ownership proved at hearing—Procedure.*—Exclusive possession can only be awarded on proof of exclusive title. If a case not alleged by the plaintiff is disclosed in the evidence, the Court can allow it to be set up, provided a specific issue is raised on it, and the defendant is given an opportunity of meeting it. PARAHSRAM *v.* MIRAJI

[I. L. R., 20 Bom., 569

69. — *Suit for exclusive possession—Proof of hearing of joint ownership—Procedure.*—The plaintiff sued for possession ... that the land

possession allowed his claim and gave ... On second appeal,—*Held* that exclusive possession could not be awarded unless exclusive title was ... which was not

70. — *Failure of proof of right to sole possession—Decree on admission of defendant of joint possession.*—Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession, but the plaintiff went on with his suit in order to get a decree that he was solely entitled and in sole possession, and failed to prove his case, he was held not entitled to a decree founded on joint possession. LUKHUN SINGH *v* NUFFUR SING

[16 W. R., 311

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

71. ———— *Suit for possession of share—Decree for joint possession.*—In a suit to recover possession of a third part of a khanabari, where the first Court, considering that there never had been a partition in definite shares, ordered restoration to the sort of possession plaintiff had enjoyed previous to being dispossessed,—*Held* that there was no objection to the decree being in that form; and although a plaintiff does not prove the precise claim which he makes, if he is substantially right he ought to have a decree, and not be left to bring another suit. RAJKISHORE BHUDDUR v. HUREE MOHUN BHUDDUR . 19 W. R., 195

Dissenting from BEEJOYNATH CHATTERJEE v. LUCKHEE MONEE DABEE . 12 W. R., 248

72. ———— *Claim to share of property as being partitioned—Relief inconsistent with allegations on plaint.*—In a suit to recover a quantity of land alleged to have formed

found to be joint property. FUKEER DASS POOROHEET v. GOPAL MOOKERJEE . 12 W. R., 107

73. ———— *Suit for possession on allegation of partition—Failure to prove division—Change of case on appeal.*—Plaintiffs, being members of a joint Hindu family alleging division, and a sale to them by other members of their share in the family property more than twelve years before suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged One of the members of the family who was

RAMAKRISHNA . I. L. R., 12 Mad., 292

74. ———— *Claim to property on separate title—Right to decree on joint title.*—The plaintiff alleged in his plaint that the

that the defendant was not at liberty to erect the hut without the express permission of the plaintiff, and

CHANDRA MITTER
[3 B. L. R., Ap., 111: 12 W. R., 69

75. ———— Pre-emption, Suit for—*Claim to right in different ways.*—In a suit to

76. ———— Principal and agent—*Suit by principal against agent—Failure of suit on grounds pleaded.*—A bank sued H, its agent, who had appointed N to act in the matter of the agency, for money belonging to it which H had paid N for the purposes of the agency, and which was not accounted for by N, claiming the same on the

gave the plaintiff bank a decree against H on the ground that he had not exercised ordinary prudence in selecting N as an agent for his principal. *Held* that, inasmuch as the plaintiff bank had not

LAND MORTGAGE BANK OF INDIA
[I. L. R., 5 All., 456

77. ———— Rent—*Suit for arrears of rent—Failure to prove contract—Claim for use and occupation.*—Where a plaintiff sued for rent and failed to prove any contract, express or implied, to pay it, he was held not entitled to change his case and ask for compensation for use and occupation. LUCHMEEPUT DOSS v. ENAET ALI 22 W. R., 346

78. ———— *Suit for arrears of rent—Failure of plaintiff to prove alleged rate of rent—Ascertainment of proper rate—Duty of Court—Form of decree.*—In a suit for arrears of rent at certain alleged rates in which the plaintiff fails to prove the rates alleged by him, it is not the duty of the Court to ascertain what were the fair rates, unless it is asked to do so. The case of *Punnoo Singh v. Nirghin Singh, I. L. R., 7 Calc., 298,* does not lay down a contrary rule. RASH DHARY GOPE v. KHAKON SINGH
[I. L. R., 24 Calc., 433

79. ———— *Suit for rent on unstamped lease—Failure to prove lease—Right to recover damages for use and occupation.*—The plaintiff alleged that he had given possession to the

possession; and he claimed to recover possession of

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

the property and a certain sum for its use and occupation by the defendant. He also claimed to recover the same sum as damages for the retention of the estate by the defendant, from the date up to which the defendant had last paid rent. The agreement between the parties was contained in certain letters which were unstamped. *Held* that, although the claim to relief made by the plaintiff on the basis of *the contract must fail, because there was no evidence* of the contract on which the Court could act, yet he could fall back on his claim to recover damages for [illegible]

[illegible] 6 N. W., 65

80. ———— *Suit for rent in land—Evidence of nuqdi rent.*—In a suit for a balance of rent on the allegation that defendants cultivated a portion of plaintiffs' jaghir as bhowli tenants, where defendants denied that they were such tenants and pleaded a mokurari pottah,—*Held* that, even on the defendants failing to establish their plea, the suit could not succeed, as the plaintiffs failed to make out their case, and it appeared that the defendants were holding the whole jaghir at a nukdi rent. LUCHMEEDHUR PATTUCK *v.* RUGHOOBUR SINGH . . . . 24 W. R., 234

81. ———— *Suit for declaratory decree—Suit under Bengal Rent Act, 1869.*—Where the plaintiff sued under Bengal Act VIII of 1869 for a declaration that certain land was mal, as well as for assessment of rent thereon and for arrears of rent at the rate assessed, and the suit was dismissed, and on appeal the plaintiff abandoned the two last points in his claim and asked merely for a declaratory decree,—*Held* that the lower Appellate Court ought, notwithstanding the plaintiff had elected to sue under the Rent Act, to have proceeded with that part of the case, and disposed of the appeal as to that only. ANUND MOYEE DOSSEE *v.* RAYE MONEE DOSSEE . . . . . . 20 W. R., 14

82. ———— *Suit for kabuliat on allegation of holding specific quantity of land—Failure to prove allegation.*—In a suit for a kabuliat, on the allegation that the defendant is holding a specific quantity of land under him, if the plaintiff's allegations are disproved, and the relation of landlord and tenant is not established, the plaintiff's suit must altogether fail. YAKOOB ALI *v.* KAZEEMOOLLAH . . . . 8 W. R., 329

83. ———— *Suit for rent—Failure to prove kabuliat.*—The plaintiff, having sued for rent upon a kabuliat and failed to prove it, is not entitled to a decree if he shows that the defendants had paid him rent for a number of years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. NURROHURRY MOHUNTO *v.* NARAINEE DOSSEE

[W. R., F. B., 23: 1 Ind Jur., O. S., 9
1 Hay, 234

S. C. NAIRAINEE DOSSEE *v.* NURROHURRY MOHUNTO . . . . Marsh., 70

WOODOY NARAIN *v.* DURRIAHO ROY
[W. R., 1864, 157

RAM NAFFER KHARA *v.* DEGUMBER CHATTERJEE
[W. R., 1864, 259

KUREEMOODDEEN BISWAS *v.* HUROCHUNDER GOOHO . . . . . . 1 W. R., 305

GOVIND RAMCHANDRA GOKHLE *v.* AHMED
[5 Bom., A. C., 133

BHOYRUB CHUNDER CHOWDHRY *v.* HARADHUN GHOSE . . . Marsh., 561: 2 Hay, 668

SIMROO KAREEGUR *v.* ANUND CHUNDER ROY
[Marsh., 57: Hay, 130

See also JEETOO *v.* BEETUN
[Marsh., 47: 1 Ind Jur., O. S., 85:
1 Hay, 112

FATIMA BEBEE *v.* AKIF SOOKANEE
[Marsh., 263: 2 Hay, 106

So also in the case of a defendant. GOOROO DOSS GHOSE *v.* SRISTEE DHUR DAY
[W. R., 1864, Act X, 39

84. ———— *Suit for pottah at fixed rate of rent—Failure in proof.*—In a suit brought by a raiyat to obtain a pottah at a fixed rent, under s. 3 of Act X of 1859, on the ground that the lands have been held at a fixed rent which has not been changed from the time of the perma[illegible]

85. ———— *Suit on kabuliat which plaintiff fails to prove.*—Plaintiff sued upon a kabuliat, and filed a pottah in support of it. The pottah having been rejected, and the kabuliat not proved, he was held not entitled to fall back on a general statement that he has a jote pottah; that the lands in dispute are part of the same; and that he can oust the defendant, who was duly in possession. GOBIND CHUNDER LAHOAY *v.* JARDINE, SKINNER & CO. . . . . . 7 W. R., 163

86. ———— *Failure to prove right to pottah—Right to have fair and equal rate of rent fixed as occupancy raiyats.*—The plaintiffs sued as raiyats to obtain a pottah corresponding with a kabuliat which they said had been taken from them by the defendants, who were 12-anna shareholders in the land, and, according to an alleged promise, to give them a pottah. The plaintiffs failed to make out the ground on which they relied, but the lower

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

finding no evidence as to what such a rate would be, gave them a decree at the old rate. *Held* that the decision was erroneous, as there was no evidence on which the question of a fair and equitable rate could be determined, and as it rested on a ground not taken by the plaintiffs, who came into Court on a special contract. If the plaintiffs' right to a pottah had rested on the ground of their being occupancy raiyats, they might claim a pottah from all the 16-anna shareholders, who ought to have been made parties and the case remanded for trial by the first Court. UTHUR HOSSEIN *v.* RAMPHAL ROY

[20 W. R., 75

87. ———— Suit for rent—

and what amount of rent was due on account of the raiyat's occupation of the land LUKHEE KANTO DASS CHOWDHRY *v* SUMEERUDDI LUSKER

[13 B. L. R., F. B., 243: 21 W. R., 208

88. ———— *No alternative claim for use and occupation—Damages for use and occupation.*—In a suit for rent, when no alternative

guished. RACKHEA SING *v* UPENDRA CHANDRA SINGH . . . I. L. R., 27 Calc., 239

89. ———— *Suit for enhancement of rent—Suit on kabuliat—Amendment of plaint—Decree for rent on failure to prove kabuliat.*—In a suit on a kabuliat, where no alternative claim for rent at an old rate is in words expressly asked for in the plaint (although it is disclosed by the plaint that the defendant had previously occupied the land in suit at a rate which the evi-

claim in the plaint appears to have been an inadvertence, it is right that the Court should do so. *Lukhee Kanto Dass Chowdhry v. Sumeeruddi Lusker, 13 B. L. R., 243,* commented upon. ROUSHAN BIBEE *v* HURRAY KRISTO NATH

[I. L. R., 8 Calc., 926

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

90. ———— *Suit for enhancement of rent—Statements in plaint.*—Although in

91. ———— *Suit for enhancement of rent—Failure to prove rent as claimed.*—If the plaintiff is unable to show that he is entitled to the rent exactly as he claims it, the Court is not

ROY CHOWDHRY *v* JEGUR KHAN

[22 W. R., 456

92. ———— *Suit for enhancement of rent—Failure to prove notice.*—In a suit originally treated by the plaintiff as a suit for en-

93. ———— *Suit for enhancement of rent—Suppression of material fact.*—A

the Court below, reserving to him the right of collecting from the tenantry an enhanced rent during the currency of the farming lease HURRO SOONDERY *v.* MUDDUN MOHUN DUTT

[W. R., 1864, Act X, 34

94. ———— Right of suit—*Cause of action not shown in plaint, but proved in course of case.*—

ceedings, and which had interfered with the enjoyment of his rights by the plaintiff LALLAH MAHTAB ROY *v.* DEBEE DUTT SINGH . 25 W. R., 204

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

95. ——— Specific performance—*Suit to enforce contract of betrothal—Failure to prove complete betrothal.*—The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that under the

be tried and decided by the Court as if it were a suit for damages on account of breach of contract. NOWBUT SINGH v. LAD KOOER . 5 N. W., 102

96. Title—*Setting up different title from that alleged*—The plaintiff cannot be allowed to set up a different title from that on which he sues and fails to prove. ISHAN CHUNDER CHOWDHRY v. SHARODA GOOPTEAH 12 W. R., 487

97. — — — Suit for recogni-

98. ——— Failure to prove *adoption—Right to succeed by inheritance—Civil Procedure Code, s. 146—Failure of plaintiff to prove unnecessary averments—Decree on admission of defendant*—In a suit brought by an undivided member of a Hindu family to set aside a sale made by the managing member and to recover a moiety of the land sold, the plaintiff alleged that he had been adopted by his deceased uncle and claimed as adopted son. The purchaser denied the adoption,

adoption was not proved, yet he was entitled to recover by virtue of the admission that he was the natural brother of the vendor, held that the latter

should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision against him. APPAYYA v. RAMIREDDI [I. L. R., 11 Mad., 367

99. ——— *Title of separate acquisition by purchase—Setting up inconsistent title by joint purchase.*—The plaintiff, having set up a title by sole purchase, was held not at liberty to

100. ——— *Allegation of title by purchase—Failure to prove alleged title—Possession, Title by.*—In a suit for declaration of title to and possession of certain property on the

another entirely different. HURO SOONDURI DEBIA v. UNNOPOORNA DEBIA . 11 W. R., 550

BIJOYA DEBIA v. BYDONATH DEB [24 W. R., 444

101. ——— *Failure to establish particular title—Title by long possession.*—Where a plaintiff brought a suit to establish his title, and the lower Court, on a trial of the same, thought the title was not proved, yet gave plain-

[25 W. R., ...

102. ——— *Failure to prove particular title—Title by right of occupancy—Act X of 1859, s. 6.*—In a suit for possession of land ... defendant pleaded that he had ... both the ... that the de- ... appeal to ... ion of a new and separate title, *viz.*, a right of occupancy under s. 6, Act X of 1859. SOORJO KOOMAR v. GUNGA-DHUR ROY . 12 W. R., 60

103. ——— *Failure to prove specific title—Title by possession—Form of plaint.*—Where a plaintiff who fails to prove a specific title ... that he ... the ... shu ... the ...
BASSINEE DOSSIA . 22 W. R., ...

104. ——— *Allegation of* ...—In a suit ...

Court, finding that defendant failed to prove his mokurari right, declared he had no title to hold as a squatter,—*Held* that, notwithstanding the failure of the defendant to prove his mokurari lease, the lower Court ought to have found what was the nature of the occupancy, and how long it had subsisted. JOHAWUR SINGH v. KHYRAT ALI [10 W. R., 360

105. ——— *Suit in one capacity, proof of right to succeed in another.*—A suit was brought by a Hindu widow to recover her share

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

as heiress to her husband, in certain family property, of which she claimed a portion in her absolute right, and a portion as one of the joint shebaits of certain idols. Among other properties plaintiff claimed one fifth share in a talukh, not as a debutter property, but, in right of her husband, as her absolute property. The first Court found that this share was the property of a certain idol, and held that she had not maintained the allegation in her plaint, and even if entitled to it in her right of joint shebait, she could not recover in that capacity, as she had not framed her plaint in that way and had not sued as shebai[illegible]
to be rigl[illegible]
of form[illegible]
prayed f[illegible]
MONEE DOSSEE [illegible] 25 W. R., P. C., 308

106. ———— *Amendment of plaint—Alternative relief—Ejectment suit—Failure to prove lease—General title.*—Where, in an action of ejectment against a tenant holding over, the lease sued on was inadmissible in evidence for want of registration, and the plaint was not amended to one containing an alternative claim for partition,—*Held* that the plaintiff could not be allowed to fall back upon his general title and obtain a decree for partition RAMCHANDRA BAPUJI GOKHLE *v.* VASUDEV MORBHAT KALE

[I. L. R., 10 Bom., 451

107. ———— *Right to easement in suit for right of ownership—Decision on case not made in pleadings*—In a suit brought to establish a right of ownership over certain land,—*Held* it was not competent to the Court to enter into and decide upon the plaintiff's right to an easement over the same A question not raised by the plaint ought not to be decided by the Court LALJI RATANJI *v.* GANGARAM TULJARAM

[2 Bom., 184 : 2nd Ed., 176

108. ———— *Title by prescription—Making case different from that in plaint.*—In a suit for the removal of a pucca building recently erected by defendant upon land lying between the premises of the two parties to the dispute, where plaintiff's claim to use the land had been put upon his title as owner, —*Held* that, having failed to make out the case originally set forth in the plaint, plaintiff had no right to fall back upon a title by prescription. BHOOBUN MOHUN MUNDUL *v.* RASH BEHAREE PAUL . 15 W. R., 84

109. ———— *Suit by decree-holder to declare a house subject to attachment in execution as being the property of the judgment-debtor—Decree for plaintiff on ground that judgment-debtor, though not the owner of the house, had an attachable interest in it as permanent tenant—New case made on appeal.*—The plaintiff's case being that a certain house was the absolute property of his judgment-debtor, and that therefore he (the plaintiff) was entitled to attach it in execution of his decree, the Subordinate Judge found that the judgment-debtor was not the owner of the house, and rejected the plaintiff's claim. The Appellate Court held that (though the judgment-debtor was not the owner) he had an attachable interest in the house as permanent tenant, and allowed the plaintiff's claim. On appeal to the High Court by the defendant,—*Held* that the order of the Appellate Court made out an entirely new case for the plaintiff which he had not made himself at any period of the trial, and that the decree of the lower Appellate Court should be reversed. IRANGOWDA *v.* SESHAPA I. L. R., 17 Bom., 772

3 ADMISSION OF PART OF CLAIM.

110. ———— *Suit for rent—Failure to prove jummabundi—Form of decree.*—The plaintiff sued for rent at R22 a year on a jummabundi, which he alleged was signed by all the raiyats when he came into possession, the defendant denied that he was a party to the jummabundi, but admitted that he held some portion of the land as tenant of the [illegible]

at all, accept it as a whole, and was therefore only entitled to a decree for R5-15, and not to a decree for all the years for which he claimed rent at R4-13 per annum. BONOMALEE CHURN MYTEE *v.* HAFIZUDDEEN

[13 B. L. R., 247 note : 12 W. R., 317

And *see* LUKHEE KANTO DASS CHOWDHURY *v.* SUMEERUDDI LUSKER

[13 B. L. R., F. B., 243 : 21 W. R., 317

and ROUSHAN BIBEE *v.* HURRAY KRISTO NATH

[I. L. R., 8 Calc., 926

111. ———— *Dismissal of suit* [illegible]

[illegible] *v.* RAJOO DEY

[13 B. L. R., 245 note : 19 W. R., 234

ROOKHINI KANT ROY *v.* SHARIKATUNISSA BIBI

[13 B. L. R., 246 note : 20 W. R., 64

RAJ COOMAR SINGH *v.* CHOTO RAJ COOMAR SINGH W. R., 1864, Act X, 12

HULODHUR SEN *v.* SEETUL CHUNDER BHOOMICK

[23 W. R., 85

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

3 ADMISSION OF PART OF CLAIM —*continued.*

112. ———————— *Failure to prove case—Right to decree on admission of defendant—Dismissal of suit.*—In a suit for rent, based upon an alleged settlement, the plaintiff failed to prove such settlement. *Held* that, no issue having been raised as to what was the fair and proper value of the land, the plaintiff was not entitled to have that question determined: his suit must either be decreed at the rate admitted by defendant, or dismissed. LUTF ALI KHAN *v.* FAKIRA SINGH 6 C. L. R., 208

113. ——— Suit for arrears of rent.—*Failure to prove rate—Decree at admitted rate.*—In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate of rent payable by the tenant to his landlord, and not to give a decree merely for the rent admitted by the tenant. PUNOO SINGH *v.* NIRGHIN SINGH

[I. L. R., 7 Calc., 298: 8 C. L. R., 310

114. ———————— *Suit on new agreement—Failure to prove agreement—Decree at admitted rate.*—The defendant held lands under the plaintiff at a certain rate per bigha. The plaintiff brought a suit for arrears of rent on a new agreement alleged to have been entered into by the plaintiff and the defendant, whereby the latter agreed to pay a higher rate per bigha. The lower Appellate Court found that the new agreement had never, in fact, been entered into, and gave a decree for the old rate of rent without going into the question whether it was a fair rent or not. *Held* that the decision was correct. SUFDAR REZA *v.* AMZAD ALI

[I. L. R., 7 Calc., 703: 10 C. L. R., 121

115. ———————— *Failure to prove rent in kind—Failure to prove case—Decree on* [illegible]

116 ——— Omission to make alternative claim—*Suit for rent—Beng Act VI of 1862, s. 10.*—In a suit for rent, where the claim was at the rate fixed by the revenue officer acting under Bengal Act VI of 1862, s. 10, and was dismissed on the ground that that officer had not the power to assess such rent as he thought proper,—*Held* that the plaintiff, whose claim was not in the alternative, was not entitled to a decree at the rate previously paid. DWARKANATH BOSE *v.* RAM LOCHUN BOSE

[23 W. R., 465

VARIANCE BETWEEN PLEADING AND PROOF—*concluded.*

3. ADMISSION OF PART OF CLAIM —*concluded.*

117. ——— Suit for ejectment—*Entry under unregistered lease—Holding over—Land-* [illegible]

land as tenant in 1865, under a lease for five years, which was not registered. The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she could be ejected, and claimed to deduct from the rent certain emoluments. *Held* (1) that the plaintiff could not prove the tenancy alleged in the plaint, inasmuch as the lease of 1865 was not registered, and therefore could not eject the defendant; (2) that the plaintiff was entitled, [illegible] from the [illegible] admitted [illegible] RAMAN [illegible] I. L. R., [illegible]

VATAN.

See COLLECTOR I. L. R., 18 Bom., 103

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER SERVICE TENURE.

VATANDARS.

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

VATANDARS ACT (BOMBAY ACT III OF 1874)

See HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

VENDOR.

——— Petition by—

See REGISTRATION ACT, 1877, s. 73 (1871, s. 73) . . I. L. R., 1 All., 318

VENDOR AND PURCHASER

VENDOR AND PURCHASER—*continued.*

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS I. L. R., 16 All., 286

See CASES UNDER BENAMI TRANSACTION.

See BROKER I. L. R., 20 Bom., 124
[I. L. R., 22 Bom., 540

See CONTRACT ACT, s. 73.
[15 B. L. R., 276

See CONTRACT ACT, s. 78
[I. L. R., 15 Calc., 1

See COSTS—SPECIAL CASES—VENDOR AND PURCHASER . I. L. R., 11 Bom., 272

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT
[I. L. R., 11 Bom., 272

See EASEMENT I. L. R., 18 Bom., 382

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[4 B. L. R., P. C., 16
I. L. R., 5 Calc., 669

See FRAUD—WHAT CONSTITUTES FRAUD AND PROOF OF FRAUD
[I. L. R., 13 Bom., 229

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.
[I. L. R., 19 Bom., 43

See LIMITATION ACT, 1877, ART. 134 (1871; ART. 134)
[I. L. R., 1 Bom., 269
I. L. R., 19 Bom., 140

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R., 9 All., 439

See SALE IN EXECUTION OF DECREE—PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER . . I. L. R., 4 Calc., 677

See SALE OF GOODS.
[I. L. R., 17 Bom., 62

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R., 9 All., 705
[L. R., 14 I. A., 173
I. L. R., 13 Bom., 658
I. L. R., 22 Bom., 46

VENDOR AND PURCHASER—*continued.*

1. BILLS OF SALE.

1. ——— **Effect of execution of bill of sale without delivery**—*Specific performance.*—It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate, irrespective of the actual delivery of possession. Where the vendor sells an estate of which he is not in possession, in consideration of advances to enable him to sue for its recovery, it is

BUDHU SING KALIPRASAD TEWARI *v.* PRAHLAD SEN
[2 B. L. R., P. C., 111: 12 W. R., P. C., 6

S. C. PERHLAD SEIN *v.* BUDHOO SINGH. KALIPERSHAD TEWAREE *v.* PERHLAD SEIN
[12 Moore's I. A., 275, 282

2. ——— *Suit to compel transfer of property.*—When a bill of sale, though signed and registered, has not been delivered, and no part of the purchase-money has been paid, the vendor cannot be compelled to complete the transfer. LALLA INDURJEET LALL *alias* GUJADHUR PERSHAD *v.* JUMOONA . . . . 5 W. R., 248

3. ——— *Incomplete contract.*—A bill of sale, though duly executed, was not delivered to the purchaser, but was deposited with a third party, to be held by him until the purchaser should perform certain acts, the performance of which was the consideration for the sale. The pur-

[W. R., 1864, 222

4. ——— **Vendor under bill of sale remaining in possession**—*Allegation of fraud—Suit to set aside bill of sale.*—When a person

5. ——— **Bill of sale as construed by**

VENDOR AND PURCHASER—*continued.*

4 CAVEAT EMPTOR.

19. ——— **Right of purchaser**—*Warranty of title—Hindu law—Contract—Sale of land*

20. ——— ——— — *Conditions of sale—Defect in title previous to title shown by vendor.*—When it is provided by conditions of sale of land that the vendor shall not be bound to show any title prior to an instrument of a certain date, the purchaser may insist upon a defect of title appearing *aliunde* and before that date, and if it be proved to exist may rescind the contract and recover back earnest-money, interest, and expenses MANCHARJI PESTANJI *v.* NARAYAN LAKSHUMANJI 1 Bom., 77

21. ——— **Land sold without warranty**—*Purchaser with invalid title—Liability of*

party having a better title [illegible] *v.* GORDON STUART & Co
[1 Ind. Jur., N. S., 356: 6 W. R., 152

22. ——— **Liability of purchaser**—*Inquiry as to title—Eviction after purchase.*—By the rule of *caveat emptor*, the buyer is bound by law to take care of himself and to see that he buys after satisfying himself that there is a good title. The

...JOOMDAR . . . . . 25 W. R., 46

23. ——— **Sale of shares deposited with bank for advance**—*Depreciation of security—Objection to disclose position of shares.*—

24 ——— **Fraudulent concealment by vendor of defect of title**—*Absence in sale-deed of covenant for title of purchaser—Right to damages.* In 1881 a Hindu executed a sale-deed of a house in the mofussil. The deed contained no covenant for title. The purchaser, having been ejected from a portion of the house under a decree, of which the

VENDOR AND PURCHASER—*continued.*

4. CAVEAT EMPTOR—*concluded.*

the purchaser had not insisted on a covenant for title, he must be held to have accepted all risks. *Held* that, if there had been fraudulent concealment as alleged, the purchaser was entitled to damages. GAJAPATHI *v.* ALAGIA . . I. L. R., 9 Mad., 89

5. COMPLETION OF TRANSFER.

25. ——— **Oral transfer**—*Hindu vendor and purchaser.*—Land may pass by mere parol between Hindu vendor and purchaser. MOHESH CHUNDER CHATTERJEE *v.* ISSUR CHUNDER CHATTERJEE
[1 Ind. Jur., N. S., 266

26. ——— **Want of registration**—*Sale complete without payment of purchase-money or registration of deed.*—A sale might be complete, and it still might be a condition of the contract that the purchase-money was to be paid afterwards, and

... 17

27. ——— *Transfer of Property Act (IV of 1882), s. 54 — Transfer of immoveable property by unregistered deed—Deed of which registration is optional—Suit by purchaser for possession when vendor is out of possession.*— ... Act is not exhaustive

... property, and ... plaintiff by an ... deed (the pro...) not being ... the property compulsory.—*Held*, ... from persons in possession without title, that the sale conferred a valid title on the plaintiff, though not made by registered deed or by delivery of the property. The dictum of Garth, *C.J.*, in *Narain Chunder Chuckerbutty v. Dataram Roy, I. L. R., 8 Calc., 597, at p. 612*, dissented from. KHATU BIBI *v.* MADHORAM BABSICK . I. L. R., 16 Calc., 622

28. ——— *Transfer of Property Act (IV of 1882), s. 54, para 3—Transfer of* ...

of tangible immoveable property of a ... one hundred rupees can be effected only by one of the two modes mentioned in s. 54, para. 3, of the Transfer of Property Act, etc., by a registered instrument or by delivery of possession. *Khatu Bibi* ...

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*continued.*

v. *Madhoram Barsick, I. L. R., 16 Calc*, 623, overruled MAKHAN LALL PAL *v* BUNKU BEHARI GHOSE . . . I. L. R., 19 Calc, 623

29 ———— *Transfer of Property Act (IV of 1882), s. 54—Oral sale with possession Land worth more than R100.*—The plaintiff entered into an oral contract to sell cretain land to the defendant for R2,500, and he put him into possession. The defendant made default in payment of the purchase-money The plaintiff, having professed to cancel the sale on the ground of this default, sued to recover possession of the land with mesne profits *Held* that the sale was not complete under s. 54 of the Transfer of Property Act, and the plaintiff was entitled to the relief sought by him. PAPIREDDI *v.* NARASAREDDI

[I. L. R., 16 Mad, 464

30 ———— Transfer of ownership of property—*Decree for specific performance of contract of sale—Conveyance*—In the mofussil of the Bombay Presidency, the transfer of the ownership of immoveable property to a vendee who has obtained a decree ordering the specific performance of the contract of sale to himself does not wait for the execution of a conveyance,—even if the vendor is required, as he seldom is, to execute such a coveyance,—but is effected by the passing of the decree itself, coupled with the payment of the purchase-money. DHONDIBA KRISHNAJI PATEL *v* RAMCHANDRA BHAGWAT

[I. L. R., 5 Bom., 554

31. ———— *Possession given in execution of decree.*—The formal possession given by a Civil Court under an execution operates, in point of law and fact, as between the parties, as a complete transfer of possession from one party to the other LOKESSUR KOER *v* PURGUN ROY

[I L R, 7 Calc, 418

32.———— *Execution and registration of conveyance—Failure to pay purchase-money and return of conveyance*—*D* sold a house to *P* and executed a deed of conveyance which was duly registered. [illegible]

paid by *P*, w [illegible]

sion. Shor[illegible]

tered, *P* re [illegible]

thereon to the effect that it was returned because *P* was unable to pay the purchase-money. The right, title, and interest of *P* in the house was subsequently attached and sold under a decree obtained against him by the plaintiff The plaintiff became the purchaser, [illegible]

The deed purported to make an immediate transfer of the ownership of the house to *P*, and *P* accordingly became the owner of the house. The endorsement on the conveyance, not having been registered, could not affect the property. The plaintiff therefore, as purchaser of the right, title, and interest of *P*, became legal owner of the house, but subject to all *P*'s liabilities, and as *D* had a lien upon the house for

VENDOR AND PURCHASER—*continued.*

5 COMPLETION OF TRANSFER—*continued.*

[illegible]

33. ———— *Execution of deed of sale—Failure of purchaser to perform preliminaries to possession.*—The vendor of certain immoveable property agreed to sell such property, and the purchaser agreed to purchase it on the understanding that the purchaser should retain a part of the purchase-money, and therewith discharge certain bond-debts due by the vendor, for the payment of which such property was hypothecated in the bonds On such understanding the vendor executed a conveyance of such property to the purchaser *Held*, in a suit by the purchaser for the possession of such property in virtue of such convey- [illegible]

v GOBIND PRASAD . . I. L R., 3 All, 77

34. ———— *Part payment of purchase-money—Execution, registration, and delivery of sale-deed—Completion of sale—Right of purchaser to sue for possession—Transfer of Property Act (IV of 1882), s. 54*—Non-payment of the purchase-money does not prevent the passing of the ownership of the property sold from the vendor [illegible]

Mohun Singh v. *Shib Koonwer, 1 Agra*, 65, *Goor Parshad* v. *Nunda Singh, 1 Agra*, 160, *Heera Singh* v *Ragho Nath Sahai, 3 Agra*, 30 and *Umedmal Motiram* v. *Dawa, I L R, 2 Bom.*, 547, referred to. The difference between an executed contract of sale and an executory contract-to sell, observed on *Ikbal Begam* v *Gobind Prasad I. L R, 3 All.*, 77, dissented from A deed of sale of immoveable property having been duly executed and registered and delivered, and the purchaser having paid a portion of the purchase-money to the vendor's creditors,—*Held*, with reference to s. 54 of the Transfer of Property Act (IV of 1882), that these facts amounted to a full transfer of ownership, and the purchaser could maintain a suit for possession of the [illegible]

35. ———— *Sale of immoveable property—Transfer of Property Act (IV of 1882), s 54—Delivery of possession—Registration of sale-deed*—Registration of a sale-deed constitutes a sufficient delivery of the deed to pass the interest in land contained therein *Narain Chunder*

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*continued.*

Chuckerbutty v. Dataram, I. L. R., 8 Calc., 597, followed PONNAYYA GOUNDAN *v.* MUTTU GOUNDAN [I. L. R., 17 Mad., 146

36. — — *Sale of immoveable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession under deed of sale unregist... Delivery of ... tion Act (II ... parties—Que...* defendants purchased a share in a tank in 1884, and the consideration being of a less amount than R100 and registration therefore optional, the deed of sale was unregistered. In 1886 the plaintiff purchased the same share from the same ...

... purchase ... that the defendants had possession of the purchased share from the date of their purchase. *Held* (on appeal under the Letters Patent of the High Court) by TREVELYAN, *J.*, upholding the decision of BEVERLEY, *J.* (HILL, *J.*, dissenting), that the possession obtained by the defendants was a sufficient "delivery of the property" within the meaning of s. 54 of the Transfer of Property Act. *Makhan Lall Pal v. Bunku Behari Ghose, I. L. R., 19 Calc., 623,* referred to. *Per* TREVELYAN, *J.*—It is not necessary that there should be any formal making over of possession. *Per* HILL, *J.*—When the owner of immoveable property of a value less than R100 has executed to the intending buyer an instrument purporting to transfer the ownership of the property, and the instrument has not been registered, but the intending buyer has ...

[I. L. R., 22 Calc., 179

37. — *Transfer of Property Act (IV of 1882), s. 54—Vendor and purchaser—Deed of sale—Completion of sale—Registration—Non-payment of consideration—Delivery of deed of sale.*—Mere registration of a deed of sale, unaccompanied by delivery of the deed to the vendee, does not make the transaction a completed one. Although under the Transfer of Property Act the sale of a tangible immoveable property of the value of one hundred rupees and upwards can be made only by a registered instrument, yet mere registration ...

38. — — *Contract of sale—Delivery of possession—Payment of the whole of the purchase-money—Registered conveyance not executed—Transfer—Attachment—Vendor having no attachable interest—Transfer of Property Act (IV of 1882), ss. 40, 54, 55 (6) (b)—Trusts Act (II of 1882), s. 91.*—Under a contract of sale with respect to certain fields, possession was delivered to the vendee, and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed. Subsequently a judgment-creditor of ... the fields ... property o... was decide... tered conveyance had been executed. *Held* that the ...

KARALIA NANUBHAI MAHOMED OHAI *v.* MAN-SUKHRAM VAKHATCHAND I. L. R., 24 Bom., 400

39. — *Transfer of Property Act (IV of 1882), s. 54—Sale of land—* ... is compulsory, yet mere registration may not be sufficient to pass a good title, if the parties intend that no title shall pass ... till the con...

40. — **Default in completing contract of sale**—*Partial performance.*—In suits arising out of the default on both sides to complete a contract for the purchase and sale of land in the mofussil, the Court should proceed as a Court of equity, and should look to the acts and conduct of ... the contract ...

Court for the performance of the contract in specie (TUCKER, *J.*, *dissentiente*). BALA VALAD SAVLU *v.* GABAJI BALVANT KULKARNI [2 Bom., 175: 2nd Ed., 168

41. — **Conditional contract "subject to approval of title by purchaser's solicitors"**—*Rescission—Registration Act (III of 1877), s. 17, cl. (b).*—An agreement for the purchase and sale of certain immoveable property provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the earnest-money and pay all costs incurred by the purchaser in investigating the title. The purchaser's

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*concluded.*

solicitors disapproved of the title, and the purchaser rescinded the contract. The agreement was not registered. *Held* in a suit to recover the amount of the earnest money and costs that, assuming the objections to be reasonable, the purchaser was entitled to rescind the contract. *Held* further that the agreement did not require registration. SREEGOPAL MULLICK *v.* RAM CHURN NUSKUR

[I. L. R., 8 Calc., 856: 12 C. L. R., 125

42. ———— Specific performance—*Approval of title by purchaser's solicitor—Contract.*—In a suit for specific performance of a contract for the sale of a house, the entire contract being contained in letters which provided that entry was to be given to the purchaser by a fixed date, and that the title-deeds were to be sent to the purchaser's solicitors, and "on approval of the same the purchase-money to be paid prompt,"—*Held* that the carrying out of the contract was in no way conditional upon the approval of the solicitors, but that their approval was a condition precedent to the prompt payment of the purchase-money without waiting for a conveyance, and that the title was to be investigated and approved in the ordinary way. This case distinguished from *Sreegopal Mullick v. Ram Churn Nuskur, I. L. R., 8 Calc., 856.* COHEN *v.* SUTHERLAND

[I. L. R., 17 Calc., 919

6. CONDITIONAL SALES.

43. ———— Land sold on condition of re-purchase—*Absolute sale.*—Where land was sold on a condition of re-purchase, and no time was mentioned in the instrument of sale,—*Held* that the sale had not become absolute, and that the plaintiff, having bought the original vendor's rights, was entitled to maintain a suit for recovery of the land. GURUSAMY AIYAN *v.* SWAMINADHA AIYAN

[2 Mad., 450

44. ———— Deed of conditional sale—*Beng. Reg. XV of 1793—Beng. Reg. XVII of 1806—Usufruct.*—A deed of sale executed in 1201 (1794) was subject to the condition that if the vendors, "from the year 1202 to the year 1203, should repay the whole of the consideration-money, they should receive back the deed of sale, which shall then become null and void, and if within the

and that Regulation XVII of 1806 had not a retrospective effect, and therefore did not apply, and

SINGH *v.* DHUKRUN SINGH . Marsh., 632

45. —— —— Purchaser under conditional sale—*Incumbrances.*—A purchaser under a conditional sale takes the property with all *bonâ fide* incumbrances created by his vendor previous to the sale. RADHA MOHUN DEB *v.* NUND LAL DEY

[7 W. R., 363

46. —— —— Mortgage by conditional sale—*Sale with subsequent agreement for re-purchase—Suit for pre-emption—Limitation.*—On the 6th of June 1887 one *R K* sold a certain zamindari share to *S.* On the 18th of May 1888 *B* brought a suit for pre-emption of that share. Pending the suit, on the 6th of July 1888 the vendor, the vendee, and the pre-emptor entered into an agreement, by which the vendee, recognizing the pre-emptive right of the plaintiff, agreed to re-transfer the property to the vendor or the pre-emptor on payment by either of them on the full moon of Jeth in any year of the price paid by him. On the 20th of June 1891, the vendor, affecting to treat the transaction of the 6th of June 1887 as a mortgage, made an application purporting to be under s. 83 of the Transfer of Property Act, accompanied by payment of the price of the property into Court, and prayed for redemption. The vendee refused to take out the money deposited by the vendor, and subsequently on the 13th of November 1891 *R K* applied for repayment to him of the said money, stating that he

of the 6th of June 1887 was an out and out sale, and was not, and could not be, by the subsequent agreement between the parties, turned into a mortgage by conditional sale, and in consequence that the suit brought by *R S* was barred by limitation. RAM DIN *v.* RANG LAL SINGH

[I. L. R., 17 All., 451

7. CONSIDERATION.

invalidate the third party's purchase. BHUBONESHURI DABEE *v.* TARINEE CHURN CHUCKERBUTTY

[7 W. R., 38

48. ———— *Non-payment of* ... *of sale* ... *of*—Al... , it may ... does not intend to pass the property to the purchaser

HEERA SINGH *v.* RAGHO NATH SUHAI. BHURTH SINGH *v.* RAGHO NATH SUHAI . . 3 Agra, 30

VENDOR AND PURCHASER—*continued.*

7. CONSIDERATION—*continued.*

49. ———— *Intention of parties—Failure to pay consideration. Effect of, after execution and delivery of deed*—The intention of the parties from their acts should be ascertained; and when a deed is executed and delivered to the purchaser, a subsequent default by the purchaser in the due payment of the purchase money would not, in the absence of fraud, make void the sale, or give any other right to the vendor ...

right subject to execution or payment of consideration MOHUN SINGH *v.* SHIB KOONWER

[1 Agra, 85

50. ———— Plea of valuable consideration—*Allegation of seisin of vendor and sale of absolute title* ... purchase for ... seisin of the v... for good consi...

[6 B. L. R., P. C., 530

S. C RADHANATH DOSS *v.* GISBORNE & Co

[15 W. R., P. C., 24: 14 Moore's I. A., 1

51. ———— Failure of consideration—*Bonus paid for talukh not in existence—Right to refund of bonus* ... a patni ... ailure of ... bonus is ... of *caveat emptor* does not apply to such a case KRISTO LALL MOITRO *v.* NOBBO COOMAR ROY

[5 W. R., 232

52. ———— Proof of payment of consideration—*Non-payment of consideration-money—Burden of proof*—In a suit for ...

... It was found that the vendor had been in possession during the whole of that period The plaintiff produced no evidence in proof of the payment of consideration *Held* that although, under ordinary circumstances, the party to a deed duly executed and registered who alleges non-payment of consideration is bound to prove his allegation, the fact that the plaintiff and his predecessor had silently submitted to the withholding of possession for upwards of eight years, combined with the continuous possession of the vendor, favoured the allegation of the latter that possession had been withheld because of the non-payment of consid...

[I. L. R., 8 All., 641

53. ———— Part payment of consideration—*Right to sue for possession*—*Held* that non-payment of the consideration-money can be pleaded by the seller, and inquired into by the Court, the admission of the seller at the time of registration before the Registrar being no conclusive proof of payment of the consideration money, with reference to the practice which obtains of preparing the sale-deed and registering it before payment. Under the ordinary rule of law, a purchaser has a right to sue for possession when a portion of the consideration-money has been paid, unless the contrary be shown to be the intention of the parties, and the seller has a right to sue for the balance of price GOOR PERSHAD *v.* NUNDA SINGH . . . 1 Agra, 160

54. ———— Right to refund of earnest-money—*Agreement for sale of ship—Failure of consideration.*—Plaintiff and defendants entered into an agreement for the sale by the defendants, who were thereby stated to be the absolute owners of a certain ship, to the plaintiff of the said ship. The defendants agreed with the plaintiff that they would, ...

tiff had made part payment in respect of the price of the ship *Held* that the consideration had failed, and that the plaintiff was entitled to a refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship JASSIM BINSAFF *v.* ESAT AHMED . . . . 2 Ind. Jur., N. S., 13

55. ———— Valuable consideration, Question of—*Assignment of chose in action*—The question whether an assignment of any equity of redemption admitted by the assignor was made for a valuable consideration or not, is no material in determining the rights of the assignee against a party who holds adversely to the assignor. KACHU BAPAJI *v.* KACHOBA VITHOBA . . . 10 Bom., 491

56. ———— Sale of sir land with co-... proprietary rights ... *—Suit to* ... sale which ... proprietary rights of the vendors in sir lands is an illegal contract and void as being in violation of ss. 7 and 9 of Act XII of 1881. Where, therefore, along with some zamindari land, certain sir lands were sold, and the vendors purported by their sale-deed to relinquish their ex-proprietary rights in the sir lands, but failed ... the same ... vendors ... consideration, ... paid in ... *v.* HAR PRASAD . . . . I. L. R., 10 All., 33

57. ———— If a zamindar sells his zamindari rights and includes in the sale the

VENDOR AND PURCHASER—*continued.*

7. CONSIDERATION—*concluded.*

right to cultivatory possession of the sir land, and agrees to relinquish his ex proprietary rights in respect of the sir land, the vendee, in the event of such possession not being delivered or ex proprietary rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof. *Bhikham Singh v. Har Parsad, I. L. R., 19 All., 35*, approved MURLIDHAR *v.* PEM RAJ
[I. L. R., 22 All., 205

58. ——— Deed of sale set aside for want of consideration—*Contract Act (IX of 1872), s. 25.*—On the 15th November 1892 *A* executed to *B* a deed of sale of certain land. The deed was duly registered, and it recited that the consideration-money, R 40, had been duly paid *B* got into possession of the land *A* subsequently brought a suit to set aside the deed of sale, and to recover possession, alleging that he had been induced to execute the deed when incapacitated from illness, and that the consideration-money had not been paid Both the lower Courts found that the consideration-money had not been paid. The lower Appellate Court dismissed the suit, holding that *A's* remedy was to sue for the consideration-money if it was unpaid, and that he had a lien on the land for the amount, but that he could not set aside the deed. *Held* that the deed should be set aside, and the plaintiff should recover possession. *Per* FULTON, *J.*—The sale was void for want of consideration S. 25 of the

ing and registering the conveyance. Conveyances of lands in the mofussil perfected by possession or

59. ——— Want of consideration for deed of sale—*Evidence that a deed is not intended to have the ordinary operation*—The plaintiffs sued for certain land which they claimed in succession to *R*, deceased. The defendant who was in possession

was executed RANGA AYYAR *v.* SRINIVASA AYYANGAR . . . . I. L. R., 21 Mad., 56

VENDOR AND PURCHASER—*continued.*

8. FRAUD.

60. ——— Evidence of fraud—*Inadequacy of purchase-money.*—In considering a case of alleged fraud in the purchase of an estate, it is material to inquire what relation the purchase-money paid bore to the value of the estate. SREEMUNCHUNDER DEY *v.* GOPAL CHUNDER CHUCKERBUTTY
[7 W. R., P. C., 10: 11 Moore's I. A., 28

61. ——— *Notice of facts implying bad title—Malâ fides—Questions of bonâ fides.*—Notice of fact from which the infirmity of the vendor's title might be inferred is evidence of *malâ fides*, but is not itself *mala fides*, and the question of *bonâ fide* purchase is one of fact SITHA UMMAL *v.* RUNGASAMI IYENGAR . . 5 Mad., 385

62. ——— Effect of fraud—*Goods obtained by fraud—Right of vendor.*—Where goods have been obtained by means of a fraudulent pur-

cotton, with the preconceived design of not paying for it, the sale did not pass the property · although the cotton may have been, with the vendor's consent, allowed to be placed on the vendee's boat, still the vendee must be considered as the agent of the vendor, and his possession as that of the vendor, and the cotton as still the property of the vendor, as long as the price was not paid. DURSUN LALL PANDEY *v.* INDUR CHUNDER . . . . 6 W. R., 81

63. ——— Contract Act, *ss. 17, 19—Contract induced by fraud—Right to rescind*—
the meaning
actively c
the purch
duced thereby to purchase, the fact that the purchaser by exercise of ordinary diligence might have ascertained the truth affords no answer to a suit to recover the purchase money Such a case does not fall within the exception to s. 19 of the Contract Act. MORGAN *v.* GOVERNMENT OF HAIDARABAD
[I. L. R., 11 Mad., 419

64. ——— *Fraudulent misrepresentation—Sale of immoveable property—Misdescription of area sold—Suit for damages—Nature of proof required*—A purchaser of certain immoveable property sued his vendors to recover compensation or damages on account of a deficiency in the actual area of land purchased by him as compared with the area stated in his sale-deed. There was no covenant in the sale-deed to make compensation in case of misdescription *Held* that the plaintiff, in order to succeed, must make out a fraudulent misrepresentation which he accepted as true, and which induced him to enter into the contract, and which caused him damage. *Derry v. Peek, L. R., 14 Ap. Cas., 337*, referred to. ABDULLAH KHAN *v.* ABDUL RAHMAN BEG I. L. R., 18 All., 322

VENDOR AND PURCHASER—*continued.*

9. INVALID SALES—*continued.*

attached property belonged to *D* and was liable in execution. *Held* that, inasmuch as neither the decree of the 30th April 1872, nor the plaint on which it was founded, established or sought to establish any claim against a specific lien upon the immoveable property, the subject of the present suit, it was perfectly competent for *D*, at any time previously to an attachment of the property, to alienate it, and the question for decision as to that property was whether *D* had alienated it or not. If the deed of sale by which *D* conveyed the property on the 21st August 1871 were merely colourable, and the change of ownership ostensible only and not real,—*i e*, if it was the intention of the parties that the alienee should be merely a trustee for *D* to shield the property from execution, and that *D* should continue to be the beneficial owner of it,—there would not be any alienation, and the deed of sale would be void as against an attaching creditor of *D*. If, on the other hand, the sale were a real transaction,—*i.e.*, if it was the intention of the parties that the full ownership should pass from the vendor to the vendee,—then the sale would be valid, even though it might have been in the contemplation of the parties that future attempts to attach the

his property. RAJÂN HARJI *v.* ARDESHIR HORMUSJI . . . . I. L. R., 4 Bom., 70

SAKHARAM MAHIPAT *v.* DAWUD VALAD JAWABHAI . . I. L. R., 4 Bom., 76 note

BALVANTRAV *v* JIVANJI HORMASJI [I. L. R., 4 Bom., 77

76. ——— Sale to two successive purchasers—*Non-payment of purchase-money—Right of first and second purchasers.*—The proprietor of certain immoveable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it, but had been ousted by the second purchaser. *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and entitled to receive the purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money. RAM LAKHAN RAI *v.* BANDAN RAI . . . I. L. R., 3 All., 711

77. ——— Sale of property not belong-

[22 W. R., 442

VENDOR AND PURCHASER—*continued.*

9. INVALID SALES—*concluded.*

78. ——— Deed of sale set aside as being fraudulent and void—*Right of purchaser to compensation for improvements.*—A party in possession under a deed of sale conveying real estate, the property of a defendant in a pending suit, held not entitled to any allowance for sums expended by him for improvement upon the estate, when the deed was found to be fraudulent and void as against the creditors of the vendor, and to have been executed to defeat a sequestration MUSADEE MAHOMED CAZUM SHERAZEE *v.* ALLY MAHOMED SHOOSTRY . . . 6 Moore's I. A., 27

79. ——— Purchaser with notice of prior contract to sell—*Trust Act (II of 1882), s. 91—Specific Relief Act (I of 1877), s. 27*—In a suit for land it appeared that the plaintiff had obtained a registered sale-deed, comprising the property in question, from defendants Nos 1 and 2 who had already (to the plaintiff's knowledge) contracted to sell it to another, and that the plaintiff had paid no consideration for the sale-deed, which in fact represented a collusive transaction entered into to defeat the prior contract. *Held* that the plaintiff was not entitled to recover. NAMASIVAYAM PILLAI *v.* NELLAYAPPA PILLAI . I. L. R., 18 Mad., 43

80. ——— Execution of sale-deed without consideration—*Subsequent transfer for value—Transfer of Property Act (IV of 1882), s. 54.*—In a suit for land, it appeared that in 1887 *A* had executed in favour of *B* a registered conveyance of the land in question, which purported to be a sale-deed, but that no consideration was in fact

tions above referred to, the plaintiff had purchased the land from *B*, and he now alleged that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them. *Held* that the plaintiff's claim, founded on the transaction of 1887, did not prevail against *C* and *D*. SANGU AYYAR *v.* CUMARASAMI MUDALIAR . . I. L. R., 18 Mad., 61

81. ——— Colourable sale—*Sale of pro-* ... *Indicia of fraud*—

SHET . . . . I. L. R., 23 Bom.

VENDOR AND PURCHASER—*continued.*

10. LIEN.

82. ——— Creation of lien—*Title—Notice of charge—English law as to right of bond fide purchaser for value without notice.*—By contract and deposit of title-deeds *B* charged certain land in favour of *A* as a security in respect of the non-delivery of the title-deeds of an estate bought by *A* from him. After the creation of this charge, the land was transferred by *B* to *C*. The Sudder Court hav-

[illegible]

cr charge can in general convey to another no title higher or more free than his own, it lies always on a succeeding owner to make out a case to defend such prior charge. The law in India does not enable a purchaser of land to look only to the apparent title in the Collector's books, or the presumed title of the owner in possession; and it is beyond the province of a Court of justice to give effect to the title of such

[illegible]

in good faith by *C* had not been proved. If the English doctrine on this subject be adopted, as the rule

[illegible]

83.——— Purchaser, Right of—*Produce of land, Sale of—N.-W. P. Rent Act, XVIII of 1873, s. 56—Hypothecation.*—The purchaser of the unstored produce of land in the occupation of a cultivator, with notice of the lien created on such produce by s. 56 of Act XVIII of 1873, takes such produce subject to such lien. S. A. No. 1393 of 1870 decided on the 4th February 1871, and *Achul v. Gunga Pershad, 2 Agra, 73,* followed. KINLOCK COLLECTOR OF ETAWAH KINLOCK *v.* COURT OF WARDS . . . I. L. R., 3 All., 433

84. ——— ——— - - *Lien by deposit of title-deeds—Subsequent purchase by another.*—In 1865 *C* gave *H* a lien on his property by a deposit of title-deeds. In 1867 *B* purchased the same property *bond fide* and without notice of *H*'s lien. *Held* that *B* took the property free of the lien. BUNSEE DHUR *v.* HEERA LALL

[1 N. W., Part VI, 74 : Ed. 1873, 166

85. — *Priority—Inchoate agreement to purchase—Deposit of earnest-money.*—The claimant entered into an agreement for the purchase of certain property, and on the execution of the agreement deposited R15 0 0 as earnest-money of the contract and in part payment of the purchase money. The claimant was not satisfied at that time with the title-deeds supplied by the vendor, but afterwards entered into fresh negotiations for

VENDOR AND PURCHASER—*continued*

10. LIEN—*concluded*

the purchase upon different terms. The vendor died, and the present claim was filed in a suit to administer his estate. *Held* that the claimant was entitled to be paid in full the R15,000 in priority to all other creditors, and that his lien was not lost by the failure either of the original contract or the subsequent negotiations. KENNY *v.* ADMINISTRATOR-GENERAL OF BENGAL . . . 3 B. L. R., O. C., 75

86.——— Lien, Concealment

[illegible]

He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached. The purchaser intervened under s. 246, but without success. In a suit by the purchaser to establish his absolute right,—*Held* that, as the defendants' vendor has suppressed the fact of the charge, and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien. DULLAB SIRKAR *v.* KRISHNA KUMAR BAKSHI 3 B. L. R., A. C., 407 : 12 W. R., 303

87. — — — Right to enforce lien—*Sale subject to decree declaring lien on property.*—If a decree declares a lien over *A*'s property for a certain sum in favour of *B*, and subsequently *A* sells part of this property to *B* and part to *C*, *B* cannot sue to enforce his lien against *C*'s purchase without bringing his own into contribution. RAM LOCHUN SIRCAR *v.* RAM NARAIN . I C. L. R., 296

88. ——— Lien on land created by agreement—*Sale to stranger without notice—Pur-*

[illegible]

11. NOTICE.

89. — ——— Necessity of notice of title—*Equitable doctrine of secret ownership.*—It is a rule of universal equity, and not one peculiar to English Courts, that, in order to enable the real owner of property to recover from a purchaser for

[illegible]

L. R., I. A., Sup. Vol., 40

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

90. ———— Purchaser without notice —*Secret ownership—Fraud.*—A vendee who purchases for valuable consideration, and without notice of benami, from the ostensible owner of the property held by him under an apparently good title will be protected from subsequent acts of the owner or his heir, both of whom were parties to the fraud, and his purchase will hold good against any subsequent sale made by them. RENNIE v. GUNGANARAIN CHOWDHRY . . . . 3 W. R., 10

91. ———— ———— *Equitable relief against forfeiture.*—Remarks on the doctrine of equity as to the applicability of the defence of purchase for valuable consideration without notice. The defence does not apply where the Court of Chancery is exercising a jurisdiction concurrent with that of the Courts of the law. Where *A* sold land to *B*, reserving a right to re-purchase by payment of a certain sum at a specified time, and before such time had arrived *B* re-sold to *C* for valuable consideration without notice, and *A* failed to make the payment and forfeited his right to re-purchase,—*Held* that he had no title unless relieved against the forfeiture, and that such relief could not be given as against *C*. SAMAKKAUNDAN v. PERUMAL CHETTI [2 Mad., 14

92. ———— ———— *Assignment of equitable estate—Notice to holder of legal estate—Hindu law.*—In order to complete assignment of an equitable estate in immoveable property, it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law. GOVINDRAV v. RAVJI . . . I. L. R., 12 Bom., 33

93. ———— ———— *Purchase from joint Hindu family—Presumption—Semble*—That considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTENPURAYIL MANOKI KORAN NAYAR v. PUTHEN PURAYIL MANOKI CHANDA NAYAR [3 Mad., 294

94. ———— ———— *Boná fide purchaser—Fraud in vendors.*—A *boná fide* purchaser should not be deprived of the benefit of an honest purchase even though the sale to his vendors was fraudulent if he had no notice of the fraud. GOLAM AHEA v. DIGUMBUR SINGH . W. R., 1864, 225

95. ———— ———— *Sale of whole interest—Subsequent purchase without notice by another.*—The plaintiff purchased from the first defendant who purchased from the person admitted to be the owner in 1856. The resisting defendants claimed under a subsequent sale by the same person *Held*, reversing the decree of the lower Court, that on the simple principle that after the conveyance to the first defendant the owner of the land had nothing more to convey, the resisting defendants took nothing, and the plaintiff was entitled to recover. VIRABHADRA PILLAI v. HARI RAMA PILLAI [3 Mad., 38

See contra, CHIDAMBARA NAYINAN v. ANNAPPA NAYAKKAN . . . . . 1 Mad., 62

96. ———— ———— *Boná fide purchaser—Omission to make proper inquiries into title.*—In order that a purchaser of immoveable property from a Hindu in the Island of Bombay may be entitled, as against the beneficial owner of such property, to set up the defence of being a *boná fide* purchaser without notice, he must show that he has made all proper inquiries into the title and as to the state of the family of his vendor, and of his vendor's predecessors in title for a period of twelve years at least before the date of his purchase. SAVAKLAL KARSANDAS v. ORA NIZMUDDIN 8 Bom., O. C., 77

97. ———— ———— *Notice of possession of rent—Notice of tenancy—Purchaser how far affected with notice of lessor's title.*—Notice of possession of the rents of property is notice of the tenancy, but does not of itself affect a purchaser with notice of the lessor's title. *Barnhat v. Greenshields, 9 Moore's P. C., 18*, referred to. GUNAMONI NATH v. BUSSUNT KUMARI DASI [I. L. R., 16 Calc., 414

98. ———— ———— Purchaser, Obligation of—*Joint Hindu family, Purchase from.*—When a person has notice that another has or claims an interest in property for which he is dealing, he is bound to inquire what that interest is; and if he purchases without doing so, he will be bound, [illegible] ... from liability [illegible] inquiry had been made in this case. CHUNDER MOOKERJEE v. DOORGAPERSAD BABOO [14 B. L. R., 337; 22 W. R., 248

99. Incumbrance—*Fraud—Equitable mortgage—Purchaser for valuable consideration without notice.*—The reason for the rule of equity that a purchaser of property, though for valuable consideration, yet with notice of a prior incumbrancer, purchases subject to such incumbrance, is that such purchaser is acting *malâ fide* in taking away the right of the prior incumbrancer by getting [illegible] prior purchaser [illegible] valuable [illegible] ght of a [illegible] nd upon [illegible] equity [illegible] the pro- [illegible] ty; and [illegible] become [illegible] e right

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

to convey to a subsequent purchaser, who, at the

who, also with such notice, had purchased from a *bonâ fide* purchaser for value without notice,—*Held*

100. ——————— *Bonâ fide transferee for value of mortgaged property—Ignorance of existing incumbrance.*—*Held* that a statement in answer to interrogatories, which was made by the purchaser of mortgaged property, to the effect that at the time of the purchase he was aware of the mortgage and believed that it had been satisfied, was no proof of the purchase having been made after notice of a prior mortgage, inasmuch as it was inconsistent with the knowledge of an existing incumbrance. SHEO DAYAL MAL *v.* HARI RAM

[I. L. R., 7 All., 590

101. ——————— *Purchaser for value—Notice of prior mortgage.*—The plaintiff in

property in execution of that decree, the defendant objected under s. 246 of the Civil Procedure Code, and alleged that he had purchased the property in 1865. The attachment having accordingly been

before the time of his purchase. GIRDHAR RANCHODDAS *v.* HAKAMCHAND REVACHAND

[8 Bom., A. C., 75

102. ——————— *Priority—Registration—Possession—Subsequent purchaser with notice obtaining possession and paying off mortgage—Right to recover sum applied in paying off mortgage.*—The plaintiff sued to recover land purchased by him in 1876 from the first defendant, and which was in possession of defendants 2, 3, and 4. The conveyance to the plaintiff was duly registered,

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

fendant in paying off a mortgagee who at the date of his purchase was in possession. He claimed, at all events, the repayment of this sum. *Held* (1) that the plaintiff was not entitled to the lands in the hand of the third defendant, the latter being a prior purchaser with a deed of conveyance duly registered. (2) That the plaintiff was entitled to the land in the possession of the fourth defendant, who must be taken to have purchased with notice of the plaintiff's prior purchase, inasmuch as the deed of conveyance to the latter was registered. (3) That, if the fourth defendant's purchase money was applied to pay off a mortgage which plaintiff would otherwise have had to pay, the plaintiff could not equitably recover the land without paying the fourth defendant so much of the purchase money as was so applied. NARAYAN LAKSHMAN *v.* BAPU VALAD HAIBATRAV

[I. L. R., 17 Bom., 741

103. ——— **Transfer of property subject to trust**—*Purchaser for value—Constructive notice—Tenant in possession as object of charitable trust.*—If the purchaser of an estate for value takes with notice, actual or constructive, of a trust he is bound by such trust to the same interest and in the same manner as the person from whom he purchased. A person purchasing an estate where there is a tenant in possession is bound to inquire into the title of such tenant, and if he neglects to do so he takes subject to such rights as the tenant may have. The equities are the same where there is a person in possession as the object of a charitable trust and under the trust. MANCHARJI SORABJI CHULLA *v.* KONGSEOO

[6 Bom., O. C., 59

104. ——— *Sale by landlord subject to rights of tenants—Notice to purchaser of rights—Suit by tenants to enforce rights against purchaser—Limitation.*—In 1806 the East India Company granted a village to *A*, subject to the raiyats' customary rights and privileges which were embodied in Regulation I of 1808, but the deed of conveyance was not passed until 1819, and it was then executed to the executors of *A*, who had died in the meantime. This deed made no reference to the rights and privileges of the raiyats. In 1868 the defendant purchased the village from its legal owners. In 1889 plaintiffs sued defendant for themselves and on behalf of the other raiyats of the village to enforce their rights. The defendant pleaded that, as the deed of conveyance of 1819 made no mention of these rights, he was not bound by them. *Held* that, as at the time of the conveyance of the village to the defendant the lands were in the occupation of the raiyats, the defendants ought to have made inquiry as to their rights. Having failed

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

to do this, he was bound by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him. *Mancharji Sorabji* v. *Kongseoo, 6 Bom. H. C. Rep., 59*, followed *Held* also that, as there had been no denial of plaintiff's rights until shortly before the suit it was not barred by limitation AHMEDBHOY HABIBBHOY v. BALKRISHNA MUKUND I. L. R., 19 Bom., 391

105. ——————— *Notice—Right of purchaser.*—*B*, having been sentenced to transportation for life, presented a petition in the Revenue Court, in which, stating that he owned a certain zamindari estate, and that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue register and that of *P* recorded in its stead. *P* sold the property for consideration, his vendee purchasing without notice of any trust, and it was subsequently put up for sale in execution of a decree against *P*'s vendee, and was purchased without notice of any trust *Held* that the property could not be followed into the hands of the purchaser at the execution-sale *Durga Prasad* v. *Asa Ram, I. L. R., 2 All., 361*, observed on. HAIT RAM v. DURGA PRASAD [I. L. R., 5 All., 603

106 ——— Constructive notice—*Person in possession of subject of sale* – Where there is a person in possession of an estate other than the nominal owner,—i e., the person in whose name the title-deed is,—a purchaser, although he may be a purchaser for value is bound to inquire what is the nature of his possession If he does not think fit to do so, he takes subject to the rights of the person in possession. HAKEEM MEAH v. BEEJOY PATNEE [23 W. R., 8

MASSIM MEAH v. SHAM DOSS . 22 W. R., 189

107. – *Sale in execution of decree—Sale of property on which there is a lien—Per* KENNEDY, J.—An execution-purchaser takes subject to all equities affecting the judgment-debtor, and will be bound by constructive notice in the same way as an ordinary purchaser *Kinderly* v. *Jervis, 22 Beav., 1*, and *Brewer* v. *Lord Oxford, 6 De G., M & G., 507*, cited and followed. RAM LOCHUN SIRCAR v. RAM NARAIN . 1 C. L. R., 296

108. ——— – *Doctrine of constructive notice—Secrecy in transaction.*—The Court will not apply the doctrine of constructive notice where the party seeking the benefit of that doctrine has been guilty of secrecy in the transaction with constructive notice of which he seeks to affect a purchaser HORMASJI TEMULJI v. MANKUVARBAI [12 Bom., 262

109. ——— *Notice to agent of purchaser* Notice to a purchaser's agent was held to be constructive notice to his principal, so as to fix the latter with a trust, or a burden relative to the subject of purchase which without notice he would have escaped. SEYDEE NAZEER ALI KHAN v. OJOODHYA RAM KHAN. MUNSOOR ALI KHAN v. OJOODHYA RAM KHAN . . 8 W. R., 399

110. ——————— *Liability of land purchased from Hindu devisee for debts of his testator—Onus probandi.*—*Per* PONTIFEX, J.—The question how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts stands on the same footing as a similar question would under the present English law. The creditors of the ancestor or testator may follow his lands into the possession of a purchaser from the heir or devisee, if it can be proved that such purchaser knew (1) that there were debts of the ancestor or testator left unsatisfied, and (2) also that the heir or devisee to whom he paid his purchase-money intended to apply it otherwise than in the payment of such debts. But a purchaser ignorant on either of these points has a safe title, for no duty is cast upon the purchaser from the heir or devisee to inquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase-money, even when there is an express charge of debts by the testator on the devised estate—at least when the devisee is also executor; and in such a case the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice that the latter intended to misapply the purchase money. For a purchaser to be affected with constructive notice through his solicitor, the latter himself must have actual notice. GREENDER CHUNDER GHOSE v. MACKINTOSH [I. L. R., 4 Calc., 897: 4 C. L. R., 193

111. ——————— *Specific Relief Act (I of 1877), s. 27—Specific performance of a contract, Suit for—Whether registration of an* [illegible] *of the contract—*

[illegible] sufficient

[illegible] s 27

[illegible] PATTO-

PADHYA v. ASHUTOSH GHOSE [I. L. R., 27 Calc., 358 4 C. W. N., 480

112. ——————— The question whether registration is notice or not is a question of fact, and as each case arises, it should be determined whether the omission to search the register together with other facts amounts to such gross negligence as to attract the consequence which results from notice. *Tomb* v. *Rand, 2 Bro C. C., 652*, *Evans* v. *Bicknell, 6 Ves., 174*; *Martinez* v. *Cooper, 2 Russ., 198*, *Farrow* v. *Rees, 4 Beav., 18*; *Hunt* v. *Elmes, 2 DeG., F. & J, 578*; and *Agra Bank* v. *Barry, L R, 7 H L, 149*, referred to. MONINDRA CHANDRA NANDY v. TROYLOKHONATH BURAT [2 C. W. N., 750

113. ——————— *Fraud—Registration Acts, Effect of.*—When a person is proved to have had a knowledge of certain facts, or to have [illegible] in consequence of which

[illegible] would have

[illegible] would have

[illegible] es him with

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

having himself had notice of that particular fact. There may be such wilful negligence in abstaining from inquiry into facts which would convey actual notice as may properly be held to have the consequences of notice actually obtained But if there is

notice ought not to be applied. Constructive notice may apply as against third persons from a neglect to call for deeds and documents of title, but not to the same extent where a Registration Act is in operation, as it would where no Registration Act prevails. *Agra Bank v. Barry, L R, 7 H L., 135,* followed. If an agent authorized to sell property

114. ——————— *Registration—Possession—Registration Acts, Effect of—English Registry Acts, Stat 7 Anne, c 20, s. 1, 2 & 3 Anne, c. 4, s 1; 6 Anne, c 35, s. 1, 8 Geo 2, c 6, s 1—Irish Registry Act, 6 Anne, c 2, s 4 (Ireland).*—Neither in England nor in Ireland has mere registration been held to amount to notice to subsequent mortgagees or purchasers In Bombay the Courts have adopted the rule which prevails in America, and have held that registration does amount to notice to all subsequent purchasers of the same property. Possession has been deemed by Hindu and Mahomedan law, as interpreted in the Presidency of Bombay, to amount to notice of such title as the person in possession may have, and any other person who takes a mortgage or other charge upon immoveable property without ascertaining the nature of the claim of him who is in possession does so at his own risk This is the rule in England also The Indian Registration Acts prior to the year 1864, like the Middlesex Registry Act (Stat 7 Anne, c 20, s. 1), the Yorkshire Registry Acts (Stat. 2 & 3 Anne, c 4, s 1; 6 Anne, c 35, s 1, 8 Geo II, c 6, s 1), and the Irish Registry Act (Stat 6 Anne, c 2, s. 4, Ir), gave priority of rank to priority of registration The later Indian Registration Acts—*viz*, Acts XVI of 1864, XX of 1866, VIII of 1871, and III of 1877—proceed upon a different principle Under them a registered instrument operates from the time at which it would have commenced to

case under the Indian Registration Acts passed in, and subsequently to, 1864, which have not (like the previous enactments) given priority of rank to priority of registration the Courts have also regarded registration as an equivalent for possession where the

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

instrument earlier in date has been registered, but

115 ——————— *Priority—Possession—Vendor and purchaser—Purchaser without possession—Subsequent purchaser with possession and without notice of prior purchase.*—The plaintiff purchased the land in dispute on the 28th February 1878 and on the same day lodged his deed of purchase with the Registrar together with the registration fee It was registered on the 29th April 1878 He was not put in possession of the property The defendant purchased the same property on the 1st April 1878, and on the following day lodged his deed of purchase with the Registrar together with the registration fee. It was registered on the 26th May 1878 His purchase was accompanied with possession. In a suit brought by

notice of the plaintiff's deed to the defendant, and therefore could not be equivalent to possession. *Held* also that as the defendant was a purchaser without notice, either actual or constructive of the plaintiff's prior purchase, and had taken the precaution of obtaining possession, both parties being Hindus and innocent purchasers, the defendant could not be deprived of the benefit of his possession HASHA *v.* RAGHO . I. L. R., 6 Bom, 165

116 ——— Priority — *Notice of prior contract—Specific Relief Act, 1877, s 27—Oral, agreement—Sale to third person in contravention of agreement—Civil Procedure Code, 1882 ss 261, 262*—Where a *bona fide* contract whether oral or written, is made for the sale of property and a

possession under his purchase CHUNDER KANT ROY *v.* KRISHNA SUNDER ROY

[I L. R., 10 Calc., 710

See NEMAI CHARAN DHABAL *v.* KOKIL BAG

[I. L. R., 6 Calc, 534: 7 C. L R., 487

117. ——— *San mortgage in Gujrat—Priority—Priority as between a purchaser at execution-sale and prior mortgagee by*

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*concluded.*

unregistered san-mortgage—Plea of purchase without notice.—The general rule in the Presidency of Bombay is that amongst Hindus possession is necessary in order to perfect a transfer of immoveable property by mortgage or deed of sale as against subsequent incumbrancers or purchases. The main ground of this rule is that possession is notice to all subsequent intending mortgagees or purchasers of the title of the party in possession It is, however, the established and judicially recognized custom of Gujarat that possession is not necessary in the case of a san-mortgage to validate it as against subsequent mortgagees or purchasers. The necessity of possession being thus dispensed with, it seems to follow that a san-mortgage, in other respects good, is valid as against a subsequent mortgagee or purchaser, whether or not such mortgagee or purchaser has notice of the san-mortgage. To hold that a subsequent mortgagee or purchaser for valuable consideration and without notice of a san-mortgage is entitled to priority over it would be tantamount to depriving the san-mortgagee of the benefit of the custom that possession is unnecessary *Per* MELVILL, *J*—Such perfect security is now afforded by registration that there appears to be hardly room for the plea of purchase without notice Seeing that a purchaser may secure himself against all unregistered mortgages without possession by simply taking possession or registering his conveyance, he is, if he omit to do so in *pari delicto* with the prior mortgagee, and it is difficult to see how he is entitled to any relief. SOBHAGCHAND GULABCHAND *v.* BHAICHAND I. L. R., 6 Bom., 193

12. POSSESSION.

118. Vendor remaining in possession—*Presumption.*—Where a deed was executed conveying a man's entire property to his son, only two years old and reserving to himself one rupee a day for his subsistence, and after execution the conveying party remained in possession,—*Held* that, in the absence of explanation no other inference could be drawn than that the deed was merely intended to be used as a blind. SREENATH SINGH CHOWDHRY *v.* HUREEPREA 10 W. R., 449

119 ——— *Condition of sale—Acceptance of security by vendor—Suit to realize security*—The defendant purchased certain jewels at a sale by auction subject to a condition that, if not paid for in three days, the goods should be sold at the risk of the purchaser Being unable to pay within the time stipulated, he gave a promissory note for the price, upon an agreement that the vendor should retain the jewels for him, but should not exercise the power of sale within three days. *Held* that the vendor could sue on the note, though he retained the jewels in his possession under the lien so created ALLEN, HAYES & Co. *v.* ANUNDO CHUNDER MUNDLE Bourke, O. C., 156

120. ——— Absence of change of possession—*Hindu law Incomplete sale.*—According to Hindu law, a change of possession is necessary to complete a sale of corporeal property, in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes as to what was really sold. A purchaser from a Hindu vendor, who buys corporeal property without possession, does not thus obtain a title which in a suit for specific performance against the vendor, he can enforce against a person actually in possession under a title adverse to the vendor by joining that person as a defendant. KACHU BATAJI *v.* KACHOBA VITHOBA . . 10 Bom., 491

121 ——— Necessity of change of possession—*Hindu and Mahomedan laws—Priority.*—It is a general but not an invariable rule that possession in the grantee or assignee is deemed essential amongst Hindus and Mahomedans to the complete transfer of immoveable property, either by gift, sale, or mortgage. Exceptions to the above rule pointed out. LAKSHMAN DASS SARUPCHAND *v.* DAYRAT [I. L. R., 6 Bom., 168

SOBHAGCHAND GOLABCHAND *v.* BHAICHAND [I. L. R, 6 Bom., 193

122. ——— *Hindu law—Delivery of possession—Notice.*—Delivery of possession of property sold is, under the Hindu law, essential to complete the title of the vendee against a third party purchasing with possession from the same vendor without notice of the prior transaction. The rule prevails as between competing conveyances both of which have been registered. Authorities and Hindu law texts on the subject reviewed LALLUBHAI SURCHAND *v* BAI AMRIT [I. L. R., 2 Bom., 299

123. ——— Sale when vendor is not in possession—*Hindu law—Necessity of possession—Ejectment.*—A Hindu, whose estate is in the possession of a trespasser or a mortgagee, may sell his right of entry as such, or his equity of redemption as such, and the purchaser may thereupon sue to eject the trespasser or to redeem the mortgage; but a bill of sale by a Hindu vendor purporting to convey the estate itself, executed by a person who is not in possession, cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment. *Prahlad Sen v Budhu Singh, 2 B. L. R., P. C., 111*, and *Bhobosoondaree Dasseah v Issur Chunder Dutt, 11 B L R., 36*, followed. *Eshan Singh v. Parbutty Koer, 22 W. R., 99; Gungahurry Nundee v. Raghubram Nundee, 14 B. L R., 307*; and *Lokenath Ghose v Juggobundhoo Roy, I. L. R., 1 Calc., 247*, referred to. BAI SURAJ *v.* DALPATRAM DAYASHANKAR . . I. L. R., 6 Bom., 380

124. ——— Possession, Delivery of—*Hindu law—Sale.*—Possession is not essentially necessary by Hindu law to give validity to a transfer by sale of immoveable property. HURKAN BHAIBATA *v.* BHAIJI PRAG . . . 1 Bom., 19

125. ——— *Title—Hindu law.*—Delivery of possession is not necessary to the transfer of ownership among Hindus *Per* MARKBY, *J.*—As a general rule of law, when a vendee has got

VENDOR AND PURCHASER—*continued.*

12. POSSESSION—*continued.*

a document which in terms professes to make over property, and the document is registered (in case registration is necessary), he becomes at once the owner without actual delivery of possession. GUNGAHURRY NUNDEE *v.* RAGHUBRAM NUNDEE

[14 B. L. R., 307 : 23 W. R., 131

126. ———— *Hindu law*—*Per curiam.*—Delivery of possession is not, under the Hindu law, essential to complete the title of a purchaser for value. NARAIN CHUNDER CHUCKERBUTTY *v.* DATARAM ROY

[I. L. R., 8 Calc., 597 : 10 C. L. R., 241

NAGUBAI *v.* MOTIGIR GURU . . 1 Bom., 5

127. ———— *Hindu law*—Under the Hindu law current in the Madras Presidency, possession is not necessary to complete a sale. VASUDEVA LHALLU *v.* NARASAMMA

[I. L. R., 5 Mad., 6

128. ———— Want of possession—*Hindu law—Sale before Transfer of Property Act—Possession*—Under the law administered in the Madras Presidency in the case of sales of land between Hindus made before the date of the Transfer of Property Act, 1882, where all has been done that the parties contemplated to complete a sale, the title of the purchaser cannot be defeated in favour of a second purchaser merely by reason that the latter obtained and the former did not obtain possession. RAMASAMI AYYANGAR *v.* MARIMUTTU BHATTAN

[I. L. R., 6 Mad., 404

129. ———— *Sale of land by a Hindu—Vendor without possession—Conveyance of right of action*—Where a Hindu vendor sold his share in certain land, but expressly stated in the deed of sale that he was out of possession, that the land was in the hands of a third party, to whom it had been mortgaged without the vendor's authority, and that he (vendor) empowered the purchaser to

[I. L. R., 6 Bom., 387

130 ———— *Transfer of property by a person not in possession—Validity of such transfer—Hindu law*—The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one *M.* The defendants contended that *M* had never been in possession of the land The lower Appellate Court held that, as *M* was not in possession at the time, when the kararnama was executed, the plaintiff's claim was not maintainable On appeal to the High Court,—*Held,* reversing the decree of the lower Appellate Court, that the circumstance of *M*'s not having been in possession at the time the kararnama was executed did not prevent the plaintiffs from recovering possession from the defendants *Kalidas v Kanhaya Lall, I. L. R., 11 Calc., 121 L. R., 11 I. A., 219,* referred to and followed. UGARCHAND MANACKCHAND *v.* MADAPA SOMANA . I. L. R., 9 Bom., 324

VENDOR AND PURCHASER—*continued.*

12. POSSESSION—*concluded.*

131 ———— *Hindu law—Sale of land*—Though by Hindu law on a sale of land it is not absolutely necessary that the purchaser should be put in possession, it is requisite that the vendor should at the time of sale be in possession of the property sold. GIRDHAR PARJARAM *v.* DAJI DULABHRAM . 7 Bom., A. C., 4

132. ———— *Mahomedan law—Sale when vendor is out of possession.*—A sale among Mahomedans, unlike a sale between Hindus, is valid as against a third party, even though the vendor was not at the time of the sale in possession of the property sold ADAMKHAN *v.* ALARAKHI

[I. L. R., 6 Bom., 645

See also MOHINUDIN *v.* MANCHERSHAH

[I. L. R., 6 Bom., 650

13. PURCHASE OF MORTGAGED PROPERTY.

133. ———— Bonâ fide purchase without notice of prior charge—*Per* PEACOCK, *C J*, NORMAN and PUNDIT, *JJ.* (BAYLEY and CAMPBELL, *JJ*, dissenting)—The fact of a purchase of land under a deed of sale being *bonâ fide* and without notice of a prior charge does not pass the land free from the prior charge MAHESWAR BAX SING *v.* BHIKHA CHOWDHRY

[B L. R., Sup Vol., 403
1 Ind. Jur., N. S., 122 : 5 W. R., 61

134 ———— Obligation of purchaser—*Inquiry by intending purchaser*—An intending purchaser of property which has been previously mortgaged, who has no reason to suppose it to be joint family property, or the vendor to be a member of a joint family, and who has inquired of and learnt from the mortgagee that there was no fraud, is not bound to make any further inquiry KYLASH KAMINEE DOSSEE *v.* TARINEE CHURN BOSE

[20 W. R., 100

135 ———— Priority—*Mortgage—Possession—Registration.*—A registered mortgagee, though without possession, is entitled to priority over a subsequent purchaser. SUNDAR JAGJIVAN *v.* GOPAL ESHVANT . 4 Bom., A. C., 68

But an unregistered mortgage without possession is not valid against a purchaser with possession. GANPAT BAJASHET *v.* KHANDU CHAUGSHET

[4 Bom., A. C., 69

136. ———— Mortgage by member of joint Hindu family—*Surrender of equity of redemption—Purchaser for valuable consideration*—

VENDOR AND PURCHASER—*continued.*

13. PURCHASE OF MORTGAGED PROPERTY —*continued.*

Pleading.—A member of a joint Hindu family granted a usufructuary mortgage; he subsequently, without

cerned, a title only as mortgagees. RADHANATH DAS *v.* ELLIOTT . . 6 B. L. R., 530

S. C. RADHANATH DAS *v.* GISBORNE & Co. [15 W. R., P. C., 24: 14 Moore's I. A., 1

137. ——— Purchase by mortgagee—*Possession—Priority—Registration.*—A registered mortgage without possession has priority over a subsequent registered sale and conveyance with possession. By a duly registered deed, *D* mortgaged land to the plaintiff with power of sale. On default made by *D*, the plaintiff brought a suit for a sale of the mortgaged land; but pending the suit, *D* sold the land to the defendant, who registered his conveyance and entered into possession. The plaintiff subsequently obtained a decree, and at the execution-sale became himself the purchaser. In the present suit he sought to recover possession from the defendant. *Held* that the plaintiff was entitled to recover. His rights as mortgagee included the right of bringing to sale the property as it subsisted at the date of the mortgage. The property having been so brought to sale, the purchaser acquired a right free from any created subsequently to the mortgage and subject to it. SHRINGARPURE *v.* PETHE [I. L. R., 2 Bom., 662

138. — Rights of mortgagees—*Mortgage sale without disclosing—Estoppel.*—The three senior members of an undivided Hindu family—the remaining members of which had disappeared—setting forth a ground of necessity, executed to the plaintiff, in November 1870, a mortgage, duly registered, of a piece of land which formed part of the family estate. Certain judgment-creditors of the absent member subsequently attached and sold his share in the said land under their decree. The plaintiff's undivided son purchased it, and in 1872

the knowledge of his purchaser. In 1874 the plain-

was subject to the lien created thereby, which lien was not disturbed by the purchase and subsequent sale of the share by the son of the mortgagee. The origin of the son's

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father's mortgage was not enough to create an estoppel against his father seeking to establish his claim under the mortgage. JOSHI *v.* JOSHI [I. L. R., 2 Bom., 650

139. ——— *Sale of equity of redemption—Right of purchaser—Parties.*—By two deeds dated respectively the 22nd February

all his right in the said lands, and *B* next day executed a kabuliat to Government for the lands, which thenceforward were entered in *B*'s name. Previously

B was in possession of the mortgaged land, but was not made a party to the suit. In 1877 *B* sold the land to *C* by a duly registered deed. In a suit

vested in *B*, and it was therefore the plaintiff's duty to have made *B* a party to the suit brought by him against *A*, who had then alienated the equity of

[I. L. R., 4 Bom., 60

140. ——— Purchase subject to mortgage—*Right to redeem—Good title at time of*

—The property

the son and heirs of the mortgagor. In execution of that decree, the property was sold subject to the

the

sale by *B* to *C*. The Court of first instance allowed the plaintiff to redeem on payment of a certain sum of money to the defendant. The Assistant Judge on appeal, reversed the decree of the first Court on the

VENDOR AND PURCHASER—*continued.*

13. PURCHASE OF MORTGAGED PROPERTY —*continued.*

ground that the certificate of sale was not in existence at the date of the institution of the suit, and that therefore the plaintiff had then no complete title.

a perfect title at the hearing of his cause, he should have a decree for redemption *Harkisandas Narandas* v. *Bai Ichha, I L. R, 4 Bom, 155,* and *Lalbhai Lakhmidas* v. *Naval Mir Kamaludin Husen Khan, 12 Bom., 247,* explained and distinguished. KRISHNAJI RAVJI v. GANESH BAPUJI

[I. L. R., 6 Calc., 139

141. —— Purchaser of mortgagor's interest—*Priority—Purchaser of value without notice of a prior san-mortgage—Suit by mortgagee against purchaser to establish right to attach property*

delivered up to the defendant, with a receipt on it by *J*, who acknowledged to have received from the defendant the amount due on his mortgage. The defendant, however, omitted to take an assignment of that mortgage to himself. The plaintiff sued *D* and *T* on his san-mortgage of the 9th July 1869, and in 1872 obtained a decree for the recovery of the

defendant answered that he was a purchaser for value, without notice of the plaintiff's mortgage. The plaintiff's claim was dismissed by the first Court, but allowed by the Appellate Court. On special appeal,—*Held* that the defendant's plea that he was a purchaser for valuable consideration, and without notice of the plaintiff's san-

suit, and was entitled to a reasonable time to redeem

the house from the plaintiff's mortgage. *Sobhagchand Gulabchand* v. *Bhaichand, I. L. R., 6 Bom., 193,* followed. NARAN PURSHOTAM v. DOLATRAM VIRCHAND . . . I. L. R., 6 Bom., 538

142. —————— *Assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by mortgagees to original mortgagor on same security—Suit by assignee of equity of redemption to redeem—*

of opinion that their purchase was not proved. On

143. —————— *Unregistered agreement by mortgagor to sell to mortgagee—Subsequent assignment of equity of redemption to third person for value, but with notice of agreement.*

VENDOR AND PURCHASER—*continued.*

13. PURCHASE OF MORTGAGED PROPERTY —*concluded.*

premises to him, that part of the purchase-money

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

144. ——— Non-payment of purchase-money—*Tender—Payment into Court—Suit for*

the

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was

bringing such a suit the plaintiff was bound, if he had not previously tendered the money to the defendant, to pay it into Court MAHADOO BEGUM *v.* HUBEEBOOL HOSSEIN . . 15 W. R., 44

145. ——— Advance of purchase-money—*Lien on purchase—Repayment—Suit for possession.*—*B* advanced money to *A* for the purchase of an estate The estate was purchased by *A*,

DHBAIN . . . . . . Marsh., 494

146. ——— Right to refund of purchase-money—*Failure to give possession—Suit for purchase-money.*—A purchaser of property of which possession was contracted to be given, but the vendor is unable to fulfil the contract, is at liberty to sue for repayment of the purchase-money, and is not obliged to sue for possession of the property. MOHUN LAL *v.* BEHAREE LAL . . . 3 N. W., 336

147. ——— *Bonâ fide purchaser—Refund of purchase money.*—A *bonâ fide* purchaser was held to be entitled to a refund of the purchase-money in a case where some dispute having

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

RAM CHUNDER DEY . . . 3 W. R., 28

148. ——— *Refusal to perform contract—Omission to repudiate sale—Suit for recovery of purchase-money.*—The defendants had sold certain property to the plaintiff. They after-

Held that the refusal was not tantamount to a rescission of the sale, and that a suit for the recovery of the purchase-money would not lie. SIRAJ-OOD-DOWLAH *v.* NOOR AHMUD . . . . 5 N. W., 194

149. ——— *Suit to recover*

purchaser was not bound to have tendered a conveyance engrossed to the vendor for execution, together with the residue of the purchase-money, before suing to recover the deposit. ESSAJI ADAMJI *v.* BHIMJI PURSHOTAM . . . 4 Bom., O. C., 125

150. ——— *Illegal sale—Sale by co-parceners without assent of others.*— in favour of another

151. ——— *Refund of purchase-money by heir taking after widow.*—*Held* estate the sale

v. ALUM SINGH

152. ——— *Failure to register* *Set-off.*—

register the conveyance, he sued to recover back his purchase-money. *Held* that he was entitled to a

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

refund of the purchase-money. The purchaser who had obtained possession might or might not, according to the particular circumstances of the case, be liable to pay the vendor a reasonable amount for the occupation of the land; but when no set off is pleaded, the vendor could only claim such amount by a separate action COURT OF WARDS v. NITTA KALI DEBI . 3 B. L. R., A. C., 353: 12 W. R., 287

See GURU PRASAD ROY v. DHANPAT SINGH [5 B. L. R., Ap., 46: 14 W. R., 20

PRADHURAM HAZRA v. ROBINSON [3 B. L. R., Ap., 49: 11 W. R., 398

153. ——— — — *Purchaser at*

SINGH v. BISSESSUR LAL SAHOO [15 B. L. R., 208: 23 W. R., 305 L. R., 2 I. A., 131

Reversing the decision of the High Court in BISSESSUR LAL SAHOO v. RAMTUHUL SINGH [11 B. L. R., 121: 19 W. R., 351

154. ——— *Right of vendor to interest claimed in part of purchase-money left unpaid by arrangement—Tender*—By an agree-

or to tender to the vendor the money retained. MUHAMMAD SIDDIQ KHAN v. MUHAMMAD NASIRULLAH KHAN . I. L. R., 21 All., 223 [L. R., 26 I. A., 45 3 C. W. N., 201

155. ——— — *Deposit by purchaser under contract—Contract going off through default of purchaser—Vendor's right to retain deposit.*—*Held* that where a contract for sale goes off by default of the purchaser, the purchaser cannot recover any deposit which may have been paid by him to the vendor in pursuance of the contract *Ex-parte Barrell In re Parnell, L. R., 10 Ch. Ap., 512,* and *Howe v. Smith, L. R., 27 Ch. D., 89,* referred to BISHAN CHAND v. RADHA KISHAN DAS . I. L. R., 19 All., 489

156. ——— *Right of purchaser to return of deposit—Lien of purchaser for the part of the purchase money paid by him.*—A purchaser of land who has paid part of the purchase-money by way of deposit, but who afterwards unjustifiably repudiates the contract of purchase, or is guilty of any default by reason of which the sale is not carried out, is not entitled to recover the

lien can only be lost to him by reason of his failing to carry out his part of the contract. BALVANTA APPAJI v. WHATEKAR BIRA [I. L. R., 23 Bom., 56

157. ——— ——— *Unsuccessful*

return of deposit of the part of the consideration-money paid where specific performance is refused—Equity and good conscience—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 37.—In a suit for specific performance of a contract, the defendant denied the contract *in into.* The lower

158. ——— — ——— *Contract to purchase property in cantonment—Rights of Government in such property—Contract making no mention of Government rights—Knowledge of purchaser—Suit by purchaser for specific performance or return of earnest-money—Earnest money when repayable—Amendment of plaint so as to claim refund of earnest money.*—On October 12th, 1887, the first defendant executed the following agreement in favour of plaintiff with respect to certain property

from you R5,000 as earnest money After the sale-deed in regard to the said bungalows is executed,

Poona Cantonment Committee wrote to the plaintiff

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

stating that Government possessed certain rights over the property. Plaintiff then demanded

to execute a deed transferring to him a full and

him. This issue was, however, struck out at the

October 1887 into a suit based on the fact that there had never been a contract at all between the parties He dismissed the suit. The plaintiff appealed, and contended that the contract was that the defendant should give an absolute title to the property, and that, as he was unable to carry out

tiff, and that the Court could not impute such

that he intended to sell only cantonment occupancy

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*concluded.*

159. ——— Voluntary payment—*Pay-*

v. Ramdhun Chakee . . 18 W. R., 503

160. ——— *Payment by purchaser at execution-sale—Purchaser looking to application of money to pay debts on estate.*—A purchaser was held entitled to recover the amount

sein v. Ahmed Reza . . 17 W. R., 4[illegible]

which she had purchased being sold in execution. *Z* was under no obligation otherwise to pay the amount of the decree. *Held* that *Z* was entitled to recover against *T* the amount so paid. Zahuran v. Tayler

[2 B. L. R., A. C., 86 : 10 W. R., 380

162. ——— *Purchase from Hindu widow—Alienation set aside by heir—Suit by purchaser to recover money paid on mortgage.*—The plaintiff purchased an estate from a Hindu

of it from the purchaser by suit. The purchaser

15. PURCHASERS, RIGHTS OF.

163. ——— Right to good title—*Immoveable property.*—A purchaser of immoveable property is entitled to receive, and the vendor is bound to give, a title free from reasonable doubt. Pitamber Sundarji v. Cassibai

[I. L. R., 11 Bom., 272

164. ——— Purchaser from Hindu executor—*Inquiry by purchaser.*—*Semble*—A purchaser from a Hindu executor is not bound to see to the exact amount of the debts which the testator has directed the executor to pay or even to inquire if any such debts actually existed; he need

VENDOR AND PURCHASER—*continued.*

15. PURCHASERS, RIGHTS OF—*continued.*

not look further than the will itself. ROOPLALL KHETTRY *v.* MOHIMA CHURN ROY [10 B. L. R., 271 note

165. ——— Specific performance, Right to—*Sale bonâ fide, but not of final character—Priority over attaching creditor.*—A deed of sale, though not strictly of a complete and final character, yet, if genuine and duly attested, may be sufficient to bind the property and to give the purchaser the right to demand a specific performance of the contract and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property. Such a deed would necessarily prevail over any intermediate attachment of the property for debts due from the original proprietor. LALLA CHOONEELAL NAGINDAS *v.* SAWAECHUND NAMEDAS [5 W. R., P. C., 111

166. ——— Validity of sale—*Sale for valuable consideration—Intention to transfer*—

167. ——— *Conveyance by mortgagee with power of sale—Absence of confirmation by mortgagor.*—B & Co., mortgagees with power to sell, sold the mortgaged property to the defendants. No deed was executed until some years afterwards, when the mortgagor was dead. The

deed acquire an indefeasible estate. DOUCETT *v.* WISE . . . . . . 3 W. R., 157

168. ——— Effect of sale—*Purchase of rights of Mahomedan widow—Failure to take ac-*

and that C was in possession of the whole estate,—

MAHOMED GOHUR ALI KHAN *v.* SHURUFUNISSA BEGUM . . . . W. R., 1864, 93

VENDOR AND PURCHASER—*continued.*

15. PURCHASERS, RIGHTS OF—*continued.*

169. ——— Purchaser of fractional share of estate—*Right to cultivate land—Rate of rent.*—In the absence of any reservation or restriction, the purchaser of a fraction of a share of an estate acquires a right either to cultivate a proportionate share of the lands cultivated by his vendors

other sum as mesne profits. CHYTUN SINGH *v.* KAYESSUR KOONWUR . . . 5 W. R., 117

170. ——— Specification of land sold—*Purchase of specified land with description of amount.*—A party who buys a specified talukh with

171. ——— *Omission to specify area sold—Misdescription—Compensation for smaller area.*—The specification in a deed of sale of land of the area of the land sold *primâ facie* implies that the area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of land the real area of which is found to fall short of the area specified in the deed of sale. SULEMAN VADU *v.* TRIKAMJI VELJI . . . . 12 Bom., 10

172. ——— *Specification in sale certificate—Sale by purchaser at execution sale who has obtained possession under a certificate of sale more extensive than the decree.*—Where a decree-holder obtains an order for the sale of his

without notice of the difference between the certificate and the order of sale, the latter has a good title. GOWREE KUMEE BHUTTACHARJEE *v.* SURUTH CHUNDER DOSS BISWAS . . 22 W. R., 408

173. ——— Non-registration, Effect of—*Proof of actual contract of sale and possession on payment of purchase-money.*—*Held* that it does not follow from the non-registration within the time fixed for registration of a deed which was executed

and that in pursuance of that contract the purchaser paid the money and obtained possession. RAM SURUN DASS *v.* RAM CHUND . . . 1 Agra, 283

174. ——— Non-registration—*Sale of decree—Decree on mortgage bond—Registration*—

VENDOR AND PURCHASER—continued.

15. PURCHASERS, RIGHTS OF—*continued.*

title, and interest in the same decree to *B. Held* that the right to execute the decree as a mortgage-decree did not pass to *B.* KOOB LALL CHOWDHRY *v.* NITTYA NUND SINGH . I. L. R., 9 Calc., 839

S. C. HUB LAL CHOWDHRY *v.* NITTYANUND SINGH [12 C. L. R., 393

not form part of the stores and assets sold to the plaintiff, unless the sale of the assets, etc, had been as from some date prior to the date of purchase. CHUNDER COOMAR ROY *v.* WILKINS [10 W. R., 311

176. ——— *Assignee, Liability of, to creditor of the factory—Creditor, Rights of—Dena powna, Contract to take over.*—

not included in a schedule, dated 30th September 1856, signed by *A*, and which he alleged had been furnished to him by *A* as containing a list of the liabilities of the factory. *Held*, if a trader or other person in this country assigns his stock in trade and effects to another, and such other person enters into a contract with the first to pay the debts of the concern,

his original debtor and the assignee, but he may join them as co-defendants in the same suit. *Held* also *per* PEACOCK, *C.J.*, and NORMAN and KEMP, *JJ*

PHOOL KOONWAR *v.* CHARDON [6 W. R., Act X, 89

177. ——— *Liability of assignee to creditor—Bond given by former proprietor.*—When the holder of a bond from the former

VENDOR AND PURCHASER—concluded.

15. PURCHASERS, RIGHTS OF—*concluded.*

dents of the land and pass to the transferee under a deed of sale of the land on which they stand, unless a different intention is expressed or necessarily implied. No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is made in the sale-deed PANDURANG SHESHAGIR *v.* BHIMRAV KESHAV HIRALIKAR . I. L. R., 22 Bom., 610

179. ——— Right to rescind sale—*Concealment of defect in title—Transfer of Property Act (IV of 1882), s. 55—Meaning of words "material defect in property."*—The expression "material defect in property" in s. 55 of the Transfer of Property Act (IV of 1882) includes a defect in the title to an estate. Such a defect, if concealed by the vendor, gives the purchaser the right to rescind the sale. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS . I. L. R., 20 Bom., 522

16 SETTING ASIDE SALES.

180. ——— Ground for setting aside sale—*Stipulation to have mutation of names—*

both persons clearly understood what they were doing. —*Held* that the refusal of the revenue authorities to enter the purchaser's name in the mutation register did not constitute a ground for cancelling the sale and recovering the purchase-money. GEDEERA KOLITA *v.* DEBENDRO NARAIN KONWAR [25 W. R., 352

181. ——— *Bond fide purchase from guardian of Hindu widow acting collusively.*—The plaintiff was entitled, in right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian, who submitted to a decree; and under that decree the property was sold, and the defendant became the purchaser. *Held* that, the defendant being a *bond fide* purchaser, the sale was not liable to be set aside. KHETERMONEE DASSEE *v.* KISHENMOHUN MITTER . Marsh., 313

S. C. KISHEN MOHUN MITTER *v.* KHETTERMONEE DASSEE . 2 Hay, 196

VENDOR AND PURCHASER—*continued.*

17. TITLE.

182. ———— Implied contract for good title—*Suit by vendor for specific performance—Specific Relief Act (I of 1877), s 25—Title derived through will of former owner—Necessity for probate—Succession Act (X of 1865), s. 187—Notice to complete contract—Rescission of contract—Clause in contract requiring vendor to hand over deeds relating to property, Construction of.*—By an agreement in writing, dated the 20th June 1888, the defendant purchased a certain house in Bombay from the plaintiff for R6,000 By this

respect of this bargain is fixed at two months; within this time we are duly to have everything cleared." In September 1890 the plaintiff filed this suit for specific performance of the agreement. The defendant pleaded: 1st, that the plaintiff had failed to show a good title to the property; 2nd, that the plaintiff had not handed over to him all the deeds and documents relating to the property; 3rd, that he (the defendant) had lawfully rescinded the contract on the 30th August 1890. It appeared that in 1880 the then owner of the property, one *N*, had mortgaged it to one *V*, and that on the 26th October 1882 both mortgagor and mortgagee had joined in

obtained. In the sale deed, however, to *H* of the

party

On the

to the

to the

defendant on the 20th June 1888 *Held* that the plaintiff was bound to give the defendant a good title, or, in other words, a title free from reasonable doubt (s. 25 of the Specific Relief Act I of 1877) In the absence of a contract providing that the

plaintiff was not a good title The conveyance of the 26th October 1882 by the mortgagor and mortgagee to *C* not being registered was not admissible, and could not be referred to, so that it was

executor, but no probate of that will had been obtained. The equity of redemption remaining in

VENDOR AND PURCHASER—*continued.*

17. TITLE—*concluded.*

N as mortgagor passed on his death to his executor

Succession Act (X of 1865) the only mode of doing this was by the probate of *N*'s will, and this had not been obtained. If an heir of *N* sued for redemption, the defendant would have no defence, unless he could prove that he had acquired the equity of redemption For this purpose, by s. 187 of the

MUSAJI ESAJI . . I. L. R., 15 Bom., 657

18 VENDOR, RIGHTS AND LIABILITIES OF.

the purchase-money out of the usufruct. PREM SOONDUREE DOSSIA *v* GRISH CHUNDER BHUTTACHARJEE . . . . . 10 W. R., 194

184. ———————— *Failure to pay*

MOHSUM ALLY *v.* BALASOO KOER . 2 Hay, 576

185. ———————— *Vendor's lien for unpaid purchase-money*—In a suit claiming possession of land purchased by the plaintiff from the defendant, the Munsif threw out the claim for want

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue for the purchase-money. *Held* that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case, but as the District Judge had not decided whether the defendant had succeeded in proving that the purchase-money had not been paid, the suit should be remanded for a finding by him on that issue. YELLAPPA BIN BISAPPA *v.* MANTAPPA BIN BASAPPA [3 Bom., A. C., 102

186. —— *Contract to sell land—Rescission—Re-sale by registered deed.*—*A* sued to recover certain land which he claimed under a registered deed of sale executed by the owner. Prior to the date of this sale to *A*, *M* had been put in possession of the land under an agreement to purchase the land for R300. The sale-deed to *M* had not been executed because only R200 of the purchase money had been paid to the owner. *Held* that *A* could not recover, as it was not open to his vendor to rescind the contract with *M*. MOIDIN *v.* AVARAN . . . I. L. R., 11 Mad., 263

187. —— *Failure to pay portion of purchase-money.*—The vendees of certain land, a portion of which only was in their possession by virtue of the sale, the rest being in the possession of mortgagees, sued for a declaration of their right to such land, and to have a sale of a portion of such land, made after it had been sold to them, set

GANGA PRASAD . . . I. L. R., 4 All., 188

188. —— *Stoppage in transitu—Lien of unpaid vendors—Agents for purchase of goods—Insolvency—Right of carriers.* —A firm at Cawnpore sent an agent to Sarun, plaintiff's residence, to effect purchases in cotton, and the plaintiff, at the instance of the person so deputed,

The goods were despatched and insured, but before reaching their destination the firm became insolvent, and the plaintiff proceeded to take possession of them, but was prevented on account of the goods being previously attached by the defendant, a judgment-creditor. It was held on plaintiff's suit that the plaintiff was an unpaid vendor, and had a lien on the goods for the price, and might detain the goods till he received or was satisfied about the payment for the said goods, a completed contract for the sale of the goods notwithstanding. An unpaid vendor, in case

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

to such purchase, and are not bound to deliver the goods until they are reimbursed or secured for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor. Where the

unless when the carrier enters expressly into some new agreement, distinct from the original contract for carriage. So also the mere acts of making or

other creditors of the consignee, the unpaid vendor having an elder and preferential lien. BHOLANATH *v.* BAIJ NATH . . . . . 2 Agra, 11

189. —— *Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts — Title of endorsee of such receipts—Contract Act (IX of 1872), s. 103.*— The firm of *C D* carried on business in Bombay. *A*, the agent of the firm, bought from the first defendant *H* at Bijapur a quantity of wheat which at *A*'s request was on the 28th and 29th May 1889 consigned by *H* to the firm of *C D* at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the hundis drawn in respect of it. The wheat was sent to Bombay on the 28th and 29th May 1889, in three consignments, *viz.*, of 56, 104, and 181 bags respec-

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

thereof, each order must bear a stamp. I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the abovementioned goods subject to the conditions noted on the back,

to the second defendant V to secure an advance of R12,000. T
ture of C
receipt, to
signments
the third (
Bombay b
marks. C
Company for delivery, and paid full freight on all three consignments. He was allowed to remove the 55 bags and the 104 bags. After having done this, he loaded his carts with the 73 bags, which had then

been received before all of the 73 bags had been loaded into the carts. *Held* (1) that there was no such delivery of the 181 bags to C D's agent at Bijapur as to deprive H of his right of stoppage *in transitu* (2) That there was such a delivery of the 73 bags at the railway station to V as to determine H's right of stoppage *in transitu* It was to

part of the Company to divest themselves of their lien as carriers; for the mere fact that the carts were still standing in the goods compound of the railway station after the bags had been placed on them could not affect the question, there being no

RAMKISON . . . I. L. R., 14 Bom., 57

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

190. ——— *Sale of immoveable property—Non-payment of purchase-money—Vendor's remedy.*—A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the purchase-money is not paid His remedy is to sue for the sum due, and he has a lien on the property for the amount TRIMALRAV RAGHAVENDRA *v.* MUNICIPAL COMMISSIONERS OF HUBLI . . . . I. L. R, 3 Bom., 172

191 ——— *Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor.*—The plaintiffs owned land on which the defendant, with the plaintiff's leave, built a house. Disputes arose between plaintiffs and defendant, and in Feb-

defendant executed a rent note to the plaintiffs promising to give up the property to the plaintiffs at

dant to the plaintiff for R100, possession being given to the plaintiff under the lease for four months, that the sale was a completed transaction, although the R100 had not been paid, and that the only remedy of the defendant was to sue for the amount SAGAJI *v.* NAMDEV . . . I. L. R., 23 Bom., 525

192 ——— *Purchase money, Suit by vendor to recover—Non-registration of bonds given for purchase money of land.*—The defendants purchased land from the plaintiff, and gave bonds for the purchase-money These bonds were not registered, and were therefore not admissible in evidence *Held* that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase-money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under art 132, sch. II of the Limitation Act VIRCHAND LALCHAND *v.* KUMAJI I. L. R., 18 Bom., 48

193.——— *Transfer of Property Act (IV of 1882), s. 55—Implied covenant for title—Acts amounting to waiver of covenant—Possession taken under contract—Right to recover unpaid purchase-money—Lien*—On 16th August 1885 the defendant, having agreed to purchase a house belonging to the plaintiff, executed an agreement, in which it was stated "that he had this

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

day purchased the house belonging to Ghousiah Begum Sahiba (plaintiff) for R16,000, that he had

was not able to tender a conveyance to the defendant until January 1887, when she did so. Meanwhile the defendant took possession under the agreement, paying only a portion of the balance of the purchase-money; he also executed certain repairs to the house, and let it to a tenant and enjoyed the rent. It further appeared that shortly after the above agreement he sought to obtain a sale-deed from the plaintiff and attempted to raise a sum of money on a mortgage of the house. On 22nd December 1885 the defendant wrote to the plaintiff demanding a conveyance and giving notice that, if the sale be not completed in the following month, the interest on the balance of the purchase-money should cease, but no evidence was given as to any appropriation of the purchase-money by the defendant. In 1887 the plaintiff filed the present suit to recover the unpaid purchase-money with interest at 12 per cent *Held* that the acts of the defendant amounted to a waiver of the implied covenant for title, and that the plaintiff was entitled to recover the unpaid purchase-money with interest at the agreed rate up to the date of payment, and that he was further entitled to a lien on the property for that amount. GHOUSIAH BEGUM *v.* RUSTAMJAH

[I. L. R., 13 Mad., 158

194. ——— *Lien—Creditor of vendor, Right of, to lien—Mortgage.*—Although

[I. L. R., 9 Calc., 167: 11 C. L. R., 339

195. ——— **Conditions of sale**—*Sale by Government—Auction-sale of confiscated property—Ground for setting aside sale*—Where it was made a distinct condition of sale that the property should be sold to the highest bidder, without any restriction of the purchaser being a rebel or not,—*Held* that the Government may, like any other seller, impose any condition it pleases in reference to the property which it offers for sale, prior to sale, but is not at liberty subsequently to the sale to disaffirm or annul it on a ground not only novel but directly at variance with the terms on which it offered the property for sale. SEVA LALL *v.* MAHOMED . . . . . . 2 Agra, 160

196 ——— **Vendor keeping vendee out of possession**—*Suit for partition—Trustee—Mesne profits.*—Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. NILKAMAL LAHURI *v.* GUNOMANI DEBI

[7 B. L. R., P. C., 113: 15 W. R., P. C., 33

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*concluded.*

19. MISCELLANEOUS CASES.

RAM . . . . . . 22 W. R., 367

198. ——— **Fictitious sale**—*Mortgage—Suit by purchaser for confirmation of possession—Issues*—Where a sale by *A* to the plaintiff had taken place shortly before a mortgage of the same property by *A* to the defendant, the defendant is entitled to have raised, in a suit brought for confirmation of possession and to declare the sale valid, an issue whether the sale was *bonâ fide* and for consideration, and whether possession passed under it to the plaintiff. The proper issue is not whether the deed of sale was genuine or not. GARBHU BHAGAT *v.* RUNGLAL SING . . 7 B. L. R., Ap., 33

199 ——— **Owner standing by and seeing property sold**—*Right to have sale set aside.*—The rule that one who, knowing his own title, stands by and encourages a purchase of pro-

200. ——— **Purchaser from husband**—*Acquiescence of wife—Suit to set aside purchase as being wife's property*—Where a husband was alleged to have given a share in some property to his wife, and the husband subsequently sold the whole

TORAB . . . . .

201. ——— **Grant of estate when hav-**

to *B* by way of a zur-i-peshgi lease for twenty one years. Shortly after the granting of the lease, the zamindar got a decree against *A*, by which *A*'s ghatwali right was extinguished. In execution of

202 ———— **Separate agreement by purchaser**—*Subsequent exercise of pre-emption*—

co-sharer took that property by right of pre-emption,

203. ———— **Decree in favour of vendor** —*Sale set aside—Possession—Purchaser in pos-*

refused to grant an injunction and receiver, but ordered *V* to pay R30,000 (*i.e.*, the balance of the purchase-money) to the solicitors of the parties of investment until the hearing of the suit, and directed that, if that sum was not paid by the 21st May 1885, a receiver should be appointed to take possession of the press The suit (*i.e.*, No. 327 of 1884) was heard on the 15th February 1887, when it was

ings already arrived at on the 15th February. The decree by consent directed various accounts to be taken, and, among others, an account of the profits

VENDOR AND PURCHASER—*continued.*
19 MISCELLANEOUS CASES—*continued.*

realized by the working of the press by the defendant *V* since his possession thereof, credit being given to him for all sums expended by him in the repairs, maintenance, and working of the said press and for the management thereof by him. The decree further ordered that the defendant *V* should be repaid the

the 31st March 1887; the decree was sealed on the 13th April 1887. Meantime, on the 6th April 1887, and while the defendant *V* was still in possession, a

desisted from prosecuting his appeal, the injury to the press having made it contrary to his interest to appeal. In May 1887 the plaintiff filed the present suit, claiming to recover R50,000 from the defendant *V* as the value of the press, or such further sum as might be necessary to rebuild and restore it. He alleged that the fire was caused by the working of the press, and contended that the working of the press by the defendant *V* after the

for the loss occasioned by the fire *Held* that, independently of negligence, the defendant *V* was not liable to the plaintiff for the loss occasioned by the fire. Down to the decree of the 28th February 1887 the defendant in keeping possession of the press and working it was, no doubt, a trespasser, but subsequently to that decree he remained in possession and worked the press with the consent of the plaintiff. The maxim *volenti non fit injuria* applied to the circumstances of the case *Held* also that, no negligence having been proved against the defendant, the suit must be dismissed. JAMSETJI BURJORJI BAHADURJI *v* EBRAHIM VYDINA

[I. L. R., 13 Bom., 183

204. ———— **Right of pre-emption**—*Option of getting estate re-transferred—Mortgage.* —In July 1870 *R*, the owner of a share of a village, executed in favour of *M* an instrument whereby he transferred by sale the share to *M* absolutely. In November 1870 *M* agreed to re-transfer the share to *R*, if *R* desired, at any time within thirteen years, to re-purchase it, on payment of the sum which *M* had

VENDOR AND PURCHASER—*concluded.*

19. MISCELLANEOUS CASES—*concluded.*

205. ———————— *Condition against alienation.*—The co-sharers of a certain estate sold it to *R*. On the same day as the vendors executed the conveyance of such estate to *R* the latter executed an instrument whereby he agreed that the vendors might redeem such estate or any portion thereof, within a certain term, on repayment of the purchase money or a proportionate share thereof, and in such case the sale would be considered cancelled pro-

sued *R* to redeem such share. *Held* by the Full Bench (STUART, *C J.*, doubting) that the nature of the transaction between *R* and his vendors must be determined by looking at both the conveyance and the agreement, and, both those documents being regarded, the transaction between them was one of mortgage, and the vendors had a right of redemption, and the

1874, 5, treat as a nullity the sale which had been made to *A*, and *A*'s right to redeem could not be reasonably denied and resisted; and that a transfer

such a declaration was beyond his competence and had no legal effect RAM SARAN LAL *v.* AMIRTA KUAR . . . . I. L. R., 3 All., 369

206. ———— ———— *Specific Relief*

family to the plaintiff In a suit by the plaintiff for

VIRAYYA *v.* HANUMANTA I. L. R., 14 Mad., 459

VERBAL CONTRACT.

See LIMITATION ACT, 1877, ART. 75 [I. L. R., 3 Calc, 619

VERDICT OF JURY.

See ACQUITTAL. [I. L. R., 22 Calc., 377

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE [I. L. R., 21 Calc., 955

See CRIMINAL PROCEEDINGS. [I. L. R., 20 Mad., 445

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE. [I. L. R., 13 Mad., 426

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R., 9 All., 420

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES

See CASES UNDER REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.

1. GENERAL CASES.

1. ———— Verdict of majority—*Want of independent opinion*—The law requires a juryman

of the three is not that of a legal majority. PETAMBUR JUGI *v.* NASARUDDY . 25 W. R., Cr., 4

2. ——— Ground for refusing to accept verdict—*Verdict based on voluntary confessions.*—Wherever trial by jury exists, the verdict of the jury must be accepted, unless it is manifestly and certainly wrong. A verdict based on voluntary

3. ———— Unanimous verdict—*Further consideration of case by jury—Dissent by Judge*

VERDICT OF JURY—*continued.*

1. GENERAL CASES—*continued.*

the fifth clause of s 263 of the Code of Criminal Procedure. GOVERNMENT OF BENGAL v. MAHADDI . . . I. L. R., 5 Calc., 871

S. C. EMPRESS v. MAHUDDI . 6 C. L. R., 349

4. ——— **Dissent from verdict**—*Criminal Procedure Code, 1872, s. 263, cl. 4*—The "dissent" referred to in the 4th clause of s. 263 of the Criminal Procedure Code (Act X of 1872) must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court. EMPRESS v. BHAWANI . . I. L. R., 2 Bom., 525

5. ——— *Reference to High Court—Statement by Judge of offence committed—Criminal Procedure Code, 1872, ss. 263, 464*—It is

7. ——— *Questions as to grounds for verdict—Power of Sessions Judge.*—Per GARTH, C.J., and PRINSEP, J. (MARKBY, J., contra)—The rule laid down in *Queen* v. *Wuzir Mandal, 25 W. R., Cr., 25,* goes too far PRINSEP J. (MARKBY, J., *contra*)—The law does not prevent

KUMAR . . . 1 C. L. R., 275

8. ——— *Ambiguity in*

DHUNUM KAZEE [I. L. R., 9 Calc., 53; 11 C. L. R., 169

9. ——— *Criminal Procedure Code, 1882, s 303*—Although s 303 of the Criminal Procedure Code empowers a Judge to

may be the opinion of the Judge, if he goes so far as

VERDICT OF JURY—*continued.*

1. GENERAL CASES—*continued.*

CHURN CHUCKERBUTTY v. EMPRESS [I. L. R., 10 Calc., 140: 13 C. L. R., 358

10. ——— *Criminal Procedure Code, 1872, s. 263.*—In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 263,

second verdict, and referred the case to the High Court under s 263. *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts

is necessary, in order to ascertain what the verdict of a jury really is, that a Judge is justified under s 263 in putting questions to the jury. QUEEN v. SUSTIRAM MANDAL . . 21 W. R., Cr., 1

11. ——— *Special verdict—Question put by Judge to jury after special verdict—Penal Code, s 330.*—The prisoners were

question put by the Judge to the jury was a proper one, and not one of law The conviction upheld Such a case is not governed by the rules of English law as to special verdicts. QUEEN v. HARI PROSAD GANGOOLY 8 B. L. R., 557: 14 W. R., Cr., 59

VERDICT OF JURY—*continued.*

1. GENERAL CASES—*continued.*

act with consent." The Sessions Judge thereupon, without requiring them to reconsider their verdict or giving them any fresh directions, asked them whether they found the accused guilty or not guilty. The jury again retired and brought in a verdict of guilty, upon which the Sessions Judge sentenced the prisoner to three years' rigorous imprisonment. *Held*, reversing the conviction and sentence, that the first verdict of the jury being a special verdict, and there being no real ambiguity about it, the Sessions Judge was bound, under s. 303 of the Code of Criminal Procedure (Act X of 1882) to recover the verdict and apply the law thereto *Held* also that the second verdict could not be sustained, as there was nothing to show that the Sessions Judge gave the jury any fresh directions or explained to them that a finding that the woman had consented was tantamount to an acquittal QUEEN-EMPRESS *v.* MADHAVRAO **I. L. R., 19 Bom., 735**

13. ———————— *Murder—Culpable homicide—Grave and sudden provocation—Loss of self-control—Criminal Procedure Code (1882), s. 239* —The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation" The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return

[illegible]

Although the charge was only one of murder, the jury had a right to bring in a verdict of culpable homicide, if there was grave and sudden provocation so as to deprive the prisoner of the power of self-control. *Held* also that the jury were not bound to find a simple verdict of guilty or not guilty. They might have found a special verdict, or findings on matters of fact to which the Judge applies the law. *Held* also that the first verdict was a verdict of murder, as the jury did not find that the provocation had destroyed the power of self-control It is not a necessary consequence of anger, or other emotion that the power of self-control should be lost Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law QUEEN-EMPRESS *v.* DEVJI GOVINDJI . **I. L. R., 20 Bom., 215**

14. ——— **Form of verdict**—*Culpable homicide—Murder—Illegal finding.*—The finding of a jury that, although the accused killed the deceased, the crime was not murder because the accused had no object in killing him, is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder. QUEEN *v.* UCKOOR GHOSE . . . **1 W. R., Cr., 50**

15. ———————— *Penal Code, ss 322 and 335—Verdict of guilty under section not in*

VERDICT OF JURY—*continued.*

1. GENERAL CASES—*concluded.*

charge—Grievous hurt with provocation.—Where

[illegible]

of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstance which would confine the punishment within the limits specified in s. 335. QUEEN *v.* LUKHINARAIN AGOORI . . . . **23 W. R., Cr., 61**

16. ———————— *Offence proved, [illegible] Code of Crimi-*

[illegible]

nal Procedure, legally sustainable, although [illegible] charge.

[illegible]

offence. GOVERNMENT OF BENGAL *v.* MAHADDI **[I. L. R., 5 Calc., 871**

S. C. EMPRESS *v.* MAHUDDI . **6 C. L. R., 349**

17. ——— **Objections to verdict**—[illegible]—Where a

[illegible]

2. POWER TO INTERFERE WITH VERDICTS.

18. ——— **General principle regulating** [illegible] *of Judge*

[illegible]

19. ———————— *English law—Acquittal by jury—Disagreement by Judge—Criminal Procedure Code (Act X of 1872), s. 263.*—Notwithstanding the large discretionary power vested

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

in the High Court under s. 263 of Act X of 1872.

EMPRESS *v.* DRUNUM KAZEE [I. L. R., 9 Calc., 53: 11 C. L. R., 169

20. ——— *Exercise of powers of High Court—Criminal Procedure Code, 1872, s. 263.*—The Court should exercise the powers vested in it by s. 263 of the Criminal Procedure

QUEEN *v.* NOBIN CHUNDER BANERJEE [13 B. L. R., Ap., 20: 20 W. R., Cr., 70

QUEEN *v.* ITWARYA 14 B. L. R., Ap., 1

QUEEN *v.* HURRO MANJI . 14 B. L. R., Ap., 1 [14 B. L. R., Ap., 2 note: 21 W. R., Cr., 4

the Sessions Judge, which charge was held by the High Court to have been a proper charge, the High Court refused to interfere, although it concurred with the Sessions Judge in thinking that the verdict of the jury was not correct. The case was one in which

Contra, QUEEN *v.* SHIB CHUNDER MUNDLE [18 W. R., Cr., 46

23. ——— *Omission to sum up properly—Ground for setting aside verdict.*—

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

ing of the jury in such a case is one that an Appeal Court would set aside if the trial had taken place with assessors, the Court will interfere and set the verdict aside REG *v.* FATTECHAND VASTACHAND [5 Bom., Cr., 85

24. ——— *Criminal Procedure Code, 1872, s. 263—Ground for setting aside verdict—Misdirection*—The High Court set aside the verdict of a jury in this case, because the Judge in his direction to the jury omitted to point out the

25. ——— *Inconsistent*

Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the

[25 W. R., Cr., 36

26. ——— *Criminal Procedure Code, 1872, s. 263—Discretion of Court—Setting aside verdict of acquittal of murder*—A

each case submitted must depend upon its own peculiar circumstances In this case the Court set aside a verdict of acquittal of murder EMPRESS *v* MUKHUN KUMAR 1 C. L. R., 275

27. ——— *Judge disagreeing with verdict—Criminal Procedure Code, 1872, s. 263—Ground for setting aside verdict.*—On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge disagreed

of 1872) explained. QUEEN *v.* KOONJO LETH [11 B. L. R., 14: 20 W. R., Cr., 1

28. ——— *Judge differing from verdict—Acquittal by majority of jury—Criminal Procedure Code, 1872, s. 263*—Where a

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

jury are not unanimous in their finding, and the

29. ——— *Criminal Procedure Code, 1872, s. 263—Verdict of acquittal—Power to reverse verdict of acquittal.*—Where the

Code, find the prisoners guilty of such offence EMPRESS *v.* HARAI MIRDHA [I. L. R., 3 Calc., 189

30. ——— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury.*—The High Court, acting under s 263 of the Criminal Pro-

31. ——— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury—Confession—Evidence Act, s. 29.*—The Court on a consideration of the evidence set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under s. 29 of the Evidence Act, 1872. QUEEN *v.* RAM CHURN GHOSE . . 20 W. R., Cr., 33

32. ——— *Criminal Procedure Code, 1872, s 263—Acquittal by jury.*—The prisoner, who was charged with having committed murder, was found by the jury who tried him to

jury came to QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR . . 19 W. R., Cr., 45

33.——— *Verdict of acquittal by jury—Criminal Procedure Code, 1872, s. 263* [illegible] *majority.*—A [illegible] five) acquitted [illegible] o commit rape. [illegible] at verdict, and [illegible] under s. 263 of

sentenced the prisoner. IN THE MATTER OF TIRICKDHAREE . . . . 2 C. L. R., 1

34.——— *Criminal Procedure Code, 1872, s. 263—Interference with verdict of*

35.——— *Criminal Procedure Code, 1872, s. 263—Differing from verdict of acquittal by jury.*—Where the Sessions Judge did not consider a confession to have been induced by illegal pressure, the High Court, upon a reference

36.——— *Criminal Procedure Code, 1872, s. 263—Trial on different charges—Discharge on some charges on which jury and Sessions Judge agree—Reference of whole case to High Court.*—In a case in which the accused were charged with murder (s. 302, Penal Code), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission

charges. He differed from the majority [illegible] fourth charge, and referred the case to the High [illegible] s. 263 of the Criminal Procedure Code.

section seems to contemplate only a case in which without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in find-

of the majority on the last count, without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts. QUEEN v. UDYA CHANGA . . . 20 W. R., Cr., 73

37. ——— *Verdict in accord-ance with* ... *—Penal* ... *s 307,* ... under ss. ... Judge at the trial added a further charge under ...

the Judge having heard the evidence and having expressed his opinion to the jury that they might find the prisoner guilty under s. 325. QUEEN-EMPRESS v. JACQUIET . I. L. R., 11 Calc., 85

38. ——— *Criminal Procedure Code, 1882, s 269—Jury wrongly treated as assessors by Judge—Unanimous opinion of jury treated as assessors accepted as formal verdict —L* ...

treated the jury as assessors in respect of the charge of murder, and, convicting *L* and *N* of dacoity, acc ... pr ... of ... E ...

39. ——— *Criminal Procedure Code, s. 307—Powers of High Court on reference under s. 307—Criminal Procedure Code, ss. 418, 423 (d)* —No trial can be, legally speaking, concluded until judgment and sentence are passed, and the trial of a case referred by a Sessions Judge to the High Court under s 307 of the Criminal Procedure Code remains open for the High Court to conclude and complete, either by maintaining the

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued*

misdirection by the Judge, or misapprehension by the jury of the Judge's directions on points of law. QUEEN-EMPRESS v. MCCARTHY [I. L. R., 9 All., 420

40. ——— *Sessions Judge, Opinion of—Criminal Procedure Code, s 307—High Court, Power of*—In the exercise of its powers under s. 307 of the Code of Criminal Procedure, the ...

275; *The Empress* v *Dhunum Kazee, I L R., 9 Calc, 53, Queen-Empress* v *Mania Dayal, I. L. R, 10 Bom, 497, The Queen* v. *Ram Churn Ghose, 20 W R, Cr, 33, The Queen* v. *Sham Bagdi, 13 B L. R, Ap, 19 · 20 W. R., Cr, 78, The Queen* v. *Hurro Manjhee, 14 B L. R., Ap., 2 21 W. R, Cr, 4; The Queen* v *Wazir Mundul, 25 W. R, Cr, 25, The Queen* v. *Nobin Chunder Banerjee, 10 B L R, Ap., 20 20 W R, Cr, 70,* referred to QUEEN-EMPRESS v ITWARI SAHO [I. L. R., 15 Calc., 269

41 ——— *Criminal Procedure Code, ss 307, 418—Perversity of verdict—Procedure when Sessions Judge disagrees with verdict—Misdirection* —A jury returned a verdict of guilty against the accused in a trial for dacoity, ...

port the verdict, the High Court had no power to interfere, however absurd the verdict might be considered QUEEN-EMPRESS v. CHINNA TEVAN [I. L. R., 14 Mad., 36

42. ——— *Criminal mis-* ...

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

in reply to specific questions on the points, stated through their foreman that the majority had doubts (*1*) whether the accused had fetched dhatura from a certain field; (*2*) whether there was dhatura poison in the stomach of the deceased, (*3*) whether the death of the deceased was caused by dhatura poison The Sessions Judge differed so completely with the jury on the evidence that he submitted the case to the High Court under s. 307 of the Criminal Procedure Code. *Per* JARDINE, *J.*—The verdict of acquittal should be upheld. It was not manifestly wrong nor absolutely unreasonable. It was a verdict that reasonable but cautious men might find The Sessions Judge ought not to have put to the jury, after verdict delivered, the questions which he did put as

Per CANDY, *J* —Admitting in the present case that the Sessions Judge was wrong in putting any questions to the jury after the verdict was delivered,

is bound to act upon its own view of the evidence On a reference by a Sessions Judge, the whole case is opened up When the verdict of the jury is erro-

depends upon the inferences to be drawn from two or *three facts, neither principle nor statute forbids the*

the provisions of cl 36 of the Letters Patent, 1865 QUEEN-EMPRESS *v* DADA ANA

[I. L. R., 15 Bom., 452

46. ——— *Criminal Proce-* *...tting aside* *...e Court to* ... jury is set ... cl. (*d*) of

s. 423 of the Criminal Procedure Code (Act X of 1882), then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizin in any of the manners provided in that section The law nowhere lays down that when the verdict of the jury is set aside the Court must necessarily direct a new trial *Wafadar Khan* v. *Queen-Empress, I. L. R., 21 Calc., 955,* dissented from. The course adopted in *Queen-Empress* v. *O'Hara, I L. R., 17 Calc. 642, Regina* v.

VESTED INTERESTS.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See SUCCESSION ACT, s 98
[I. L. R., 4 Calc., 304

See CASES UNDER WILL—CONSTRUCTION.

VESTING ORDER.

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER
[I L. R., 17 Mad., 21
I. L. R., 18 Mad., 24
I. L. R., 19 Bom., 232
2 C. W. N., 372

See CASES UNDER INSOLVENT ACT, s. 7

VICE-ADMIRALTY REGULATIONS OF 1832.

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.
[I. L. R., 17 Calc., 337

See LETTERS PATENT, HIGH COURT, 1865, cl 15 . I. L. R., 17 Calc., 66

VICINAGE.

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

VILLAGE ACCOUNTANT.

See CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90) . I. L. R., 1 Mad., 266

VILLAGE CATTLE.

See PASTURAGE, RIGHT TO
[I. L. R., 2 Bom., 110

VILLAGE CHOWKIDAR.

See BENGAL REGULATION XX OF 1817, s. 21 . . . 18 W. R., 298

See VILLAGE CHOWKIDARS' ACT

VILLAGE CHOWKIDARS' ACT (BENGAL ACT VI OF 1870).

See CESS . I. L. R., 22 Calc., 680

——— s. 8—*Order imposing fine by Sub-divisional Officer—Judicial order—Revision by the High Court—Magistrate, Jurisdiction of.*—Where the collecting member of a punchayet, constituted under the provisions of the Village Chowkidars' Act (Bengal Act VI of 1870), was fined by the Sub-divisional Officer of Serampore under s 8 of the Act for having disobeyed his orders and realized assessment [illegible]

Criminal Procedure Code were applicable to the fine. The order of the Sub-divisional Officer was in its nature a judicial order, and was therefore subject to revision by the High Court The order was bad because (1) there was no trial; (2) no act punishable with fine under s. 8 of the Act (Bengal Act VI of 1870) had been committed, and (3) because the District Magistrate only had the power to impose the fine. QUEEN-EMPRESS *v* ASHWINI KUMAR GHOSE
[I. L. R., 23 Calc., 421

——— ss 26, 27, and 34.

See PENAL CODE, s. 183
[I. L. R., 25 Calc., 274

——— ss 48 and 64—[illegible]

lands lie. S. 64 of that Act does not empower the Commissioner to set aside an order passed by the Collector under s. 18. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI
[I. L. R., 21 Calc., 626

——— s. 61 [illegible]

patnidar sought to have transferred to him certain chowkidari chakran lands, which the Government had settled with the zamindar under Bengal Act VI of 1870, and where it was found that the lands were part of plaintiff's patni, and that the zamindar had sublet the same to a tenant,—*Held* that the patnidar was entitled to possession, but not to khas possession of the lands. That the tenant with whom the lands had been settled by the zamindar was entitled to retain actual possession of the lands. That the patnidar was bound to pay to the zamindar such rents for these lands as corresponded to the proportion between the gross collections and patni rent formerly payable by him. HARI NARAIN MAZUMDAR *v* MUKUND LAL MUNDAL . . 4 C. W. N., 814

——— ss. 58, 61—*Decision of Commission—*[illegible]

a commission has been appointed under s. 58 for the purpose therein mentioned, and such commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be. NOBOKRISTO MUKERJEE *v.* SECRETARY OF STATE FOR INDIA
[I. L R., 11 Calc, 632

VILLAGE CHOWKIDARS' ACT AMENDMENT ACT (BENGAL ACT I OF 1892).

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . . 2 C. W. N., 637

VILLAGE COURTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES
[I. L. R., 13 Mad., 145

See SUCCESSION CERTIFICATE ACT.
[I. L. R., 21 Mad., 115

VILLAGE MUNSIF.

See MUNSIF . I. L. R., 7 Mad., 220
[I. L. R., 8 Mad., 500
I. L. R., 5 Bom., 180
I. L. R., 15 Mad., 131
I. L. R., 20 Mad., 21
I. L. R., 21 Mad., 115

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.
[5 Mad., 45

VILLAGE MUNSIF'S PEON.

See CRIMINAL PROCEDURE CODES, s 45 (1872, s 90) . I. L. R., 1 Mad., 266

VILLAGE SUTAR (CARPENTER).

See HEREDITARY OFFICES ACT, s. 4.
[I. L. R., 21 Bom., 733

VOLUNTARY ASSIGNMENT.

See Cases under Insolvency—Voluntary Conveyances and other Assignments by Debtor.

VOLUNTARY CONVEYANCE.

See Contract Act, s. 25. [I. L. R., 2 All., 891

See Cases under Debtor and Creditor.

See Cases under Insolvency—Voluntary Conveyances and other Assignments by Debtor.

See Insolvent Act, s. 26 [I. L. R., 3 Calc., 434

putting the settlement out of the way, so that it shall not affect the conveyance which is made to the purchaser. words showing an intention on the

VOLUNTARY PAYMENT.

See Cases under Contract Act, ss. 69 and 70.

See Contract Act, s. 72 [I. L. R., 7 Calc., 573

See Cases under Contribution, Suit for—Voluntary Payments.

See Money Had and Received.
[8 B. L. R., 418
W. R., 1864, 205
3 N. W., 162
5 N. W., 1

See Money Paid . . 7 N. W., 154
[10 W. R., 400

See Money Paid for Benefit of Another
[I. L. R., 21 Calc., 142
L. R., 20 I. A., 160

See Money Paid under Process of Decree . . I. L. R., 7 Mad., 586

See Cases under Payment into Court.

See Res Judicata—Adjudications.
[13 B. L. R., 146

See Cases under Sale for Arrears of Rent—Deposit to stay Sale.

See Cases under Sale for Arrears of Revenue—Deposit to stay Sale.

VOLUNTARY PAYMENT—*continued.*

See Sale in Execution of Decree—Setting aside Sale—Rights of Purchasers—Recovery of Purchase-money . . . 11 B. L. R., 121
[15 B. L. R., 208

See Vendor and Purchaser—Purchase-money and other Payments by Purchaser . . 2 B. L. R., A. C., 86
[11 B. L. R., 121
15 B. L. R., 208
18 W. R., 503
17 W. R., 480
8 B. L. R., Ap., 55

1. ——— **Money paid, but not due, and paid under compulsion**—*Contract Act (IX of 1872), ss. 15, 72*—In execution of a decree, the plaintiff purchased certain property. Subsequently the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the same property. The plaintiff thereupon preferred a claim which was disallowed, as he had not then obtained, and consequently could not produce, the sale-certificate. In order to prevent the sale, he then paid the amount of the defendant's decree into Court, and subsequently instituted a suit against the defendant to recover the amount so paid into Court, to prevent the sale. The defendant contended that the amount was paid voluntarily and could not be recovered back. *Held*, following *Dooli Chand v. Ram Kishen Sing, L. R., 8 I. A., 93*: *I. L. R., 7 Calc., 648*, that it was not a voluntary payment, and that the plaintiff was entitled to a decree. *Fatima Khatoon Chowdrain v. Mahomed Jan Chowdhry, 12 Moore's I. A., 65*: *10 W. R., P. C., 29*, referred to. *Asibun v. Ram Proshad Dass, 1 Shome, 25*, doubted. Jugdeo Narain Singh v. Raja Singh
[I. L. R., 15 Calc., 656

2. ——— **Money paid under protest**—*Right of suit—Contract of indemnity—Contract Act, ss. 124, 141, 142*—The Thakor of Limdi

compromised, and a consent-decree was passed in 1883, providing (*inter alia*) that the Thakor should

In accordance with this decree, a moiety of the village was made over to the grassias. The Collector demanded jummabandi for this moiety. The Thakor

right to levy the jumma, that the Thakor might, if he

VOLUNTARY PAYMENT—*continued.*

chose, pay the same on behalf of the grassias, and that, if it was not paid, it would be recovered by attachment and sale of the grassias' half share. The Thakor thereupon paid the jumma on behalf of the grassias for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump jumma fixed for his talukh. This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government in respect of any of the reliefs sought, the Court being of opinion that the payments he had

stood in the relation of an insurer to the grassias from all exactions of Government dues. The payments of jumma he made on account of the grassias were therefore not voluntary, but made under protest, and as such were recoverable by suit. JASVATSINGJI FATESINGJI *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 14 Bom., 299

3. ——— Money paid for benefit of another—*Contract Act (IX of 1872), ss. 69 and 70—Money paid to protect property from sale in execution of decree for arrears of rent.*—Certain immoveable property was inherited by *S*, the mother of the plaintiff from her husband, and during her tenure of it she alienated it by deed of sale to the defendants. *S* died in April 1890, and the estate then devolved upon the plaintiff, an only daughter (there being no male issue). In 1890 the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of *S*, and to prevent the sale the plaintiff paid the amount of the decree. In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by S to the defendants were not made for legal necessity and were therefore invalid. *Held* that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants. It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was

Dinonath Mookerjee, I. L. R., 12 Calc., 213; and *Jugdeo Narain Singh v. Raja Singh, I. L. R., 5 Calc., 656,* were held to govern this case. BAMA SUNDARI DASI *v.* ADHAR CHUNDER SIRKAR

[I. L. R., 22 Calc., 28

VOLUNTARY PAYMENT—*continued.*

4. ——— Payment made to save the patni talukh from sale—*Contract Act (IX of 1872), s. 69—Arrears of rent—Payment made by mortgagee.*—The plaintiff, who was the mortgagee of

of the Subordinate Judge was reversed, and an inquiry was directed as to the conduct of the plaintiff in the

Court, and on the 4th January 1894 the appeal was dismissed, and he preferred an appeal to Her Majesty

payment was not a voluntary payment, and that the plaintiff was interested in the payment of the money, and therefore he was entitled to recover it. BINDUBASHINI DASSI *v.* HARENDRA LAL ROY

[I. L. R., 25 Calc., 305
2 C. W. N., 150

5. ——— Payment by a purchaser of a patni talukh during the pendency of an appeal for setting aside the patni sale—

of the Contract Act. *Bindubashini Dassi v. Harendra Lal Roy, I. L. R., 25 Calc., 305,* followed. The remedy which the plaintiff in this case had, after the reversal of the sale, to be reimbursed by the

Calc., 828

6. ——— Payment of decree for rent by purchaser at sale for arrears of rent—*Contract Act (IX of 1872), ss. 69, 70—Suit to recover money so due.*—Rent is by operation of law the first charge on a tenure, and a person who purchases the same at any execution-sale must, in the absence of anything to denote the contrary, be taken to

VOLUNTARY PAYMENT—*concluded.*

purchase it, charged with the rent which is due in respect of it at the time of its purchase, and there being no privity between him and the judgment-[illegible] y e [illegible] e mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to the confirmation of sale,—*Held* that the plaintiff was not entitled to recover the money paid by him for satisfying the rent decree. MOHARANEE DASYA *v.* HARENDRA LAL ROY . . 1 C. W. N., 458

VOLUNTARY SETTLEMENT.

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE
[I. L. R., 15 Bom., 549

——— Breach of Covenants in—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.
[I. L. R., 2 Bom., 273

VOLUNTEERS.

See ARMY ACT, s. 19.
[I. L. R., 22 All., 323

VOTERS, LIST OF—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . I. L. R., 22 Calc., 717

W

WAGERING CONTRACT.

See CASES UNDER CONTRACT—WAGERING CONTRACTS.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 9 Calc., 791
[I. L. R., 12 Bom., 585
I. L. R., 17 Mad., 480

WAGES.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—WAGES 1 B. L. R., S. N., 15
[I. L. R., 5 Bom., 132

See CASES UNDER MASTER AND SERVANT.

——— of labourers.

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 29

WAGES—*concluded.*

——— Suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WAGES.
[6 B. L. R., Ap., 91

See SMALL CAUSE COURT, RANGOON.
[I. L. R., 10 Calc., 878

WAGING WAR.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT OF WAGING WAR . . 9 B. L. R., Ap., 36

See SENTENCE—TRANSPORTATION.
[3 W. R., Cr., 16

WAGING WAR AGAINST THE QUEEN.

——— Conspiracy to wage war—*Treason—Misprison of treason—Limitation of period for prosecution—Penal Code, s. 121—7 Will III, c. 3, s. 5.*—The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen, under s 121 of the Penal Code, are offences under the Penal Code only, and are not treason or misprison of treason; and therefore the provisions of the Stat. 7 Will III, c. 3, s 5, as to placing a limitation on the period for prosecution are not applicable. QUEEN *v.* AMIRUDDIN
[7 B. L. R., 63: 15 W. R., Cr., 25

WAIVER.

See CASES UNDER ACQUIESCENCE.

See ARBITRATION — AWARDS — VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I. L. R., 21 Calc., 590

See CASES UNDER BOND.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
7 Mad., 263
[8 Mad., 14
I. L. R., 18 Calc., 341
I. L. R., 15 Mad., 82
I. L. R., 14 Bom., 558

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 2 Mad., 400, 407
I. L. R., 15 Mad., 82

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 18 Calc., 99
[L. R., 17 I. A., 90

See INSURANCE—LIFE INSURANCE.
[I. L. R., 23 Calc., 320

See CASES UNDER LIMITATION ACT, 1877, ART 75.

See CASES UNDER LIMITATION ACT, 1877, ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

See MALABAR LAW—MORTGAGE.
[I. L. R., 13 Mad., 490
I. L. R., 15 Mad., 480

WAIVER—*continued.*

——— by accused.

See CRIMINAL PROCEEDINGS.
[I. L. R., 2 Calc., 23
I. L. R., 6 Calc., 83

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
[I. L. R., 12 Bom., 561

——— of condition in lease.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.
[I. L. R., 20 Bom., 439

——— of covenant for title.

See VENDOR AND PURCHASER—BREACH OF COVENANT . I. L. R., 15 Mad., 50

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.
[I. L. R., 13 Mad., 158

——— of irregularity.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—JOINT DECREES—JOINT DECREE-HOLDERS I. L. R., 4 Calc., 605

——— of objection.

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL

See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION

See JURISDICTION—QUESTION OF JURISDICTION—WHEN IT MAY BE RAISED.
[I. L. R., 13 Mad., 273

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS
[I. L. R., 21 Bom., 351

See LAND ACQUISITION ACT, s. 19.
[I. L. R., 17 Bom., 299

See LIMITATION—QUESTION OF LIMITATION . I. L. R., 19 Mad., 416

See REVIEW—GROUND FOR REVIEW.
[I. L. R., 12 Bom., 228

See WRITTEN STATEMENT.
[I. L. R., 22 Calc., 268

1. ——— Waiver by conduct—*Appeal—Irregularity—Substitution of parties—Consent.*—Where the purchaser of a plaintiff's rights was substituted for the plaintiff, the irregularity was held to be cured by the consent of the defendant, implied in his ...
from
atitute
CHUN

2. ——— *Appeal—Right of objection to proceedings taken in accordance with appeal to High Court.*—Where a party, dissatisfied with the decision of the lower Court, appeals to the High Court and re-opens the whole cases he must ...

[1 C. L. R., 144

3. ——— *Withdrawal of objection—Raising same objection subsequently*—Where parties have, before the Deputy Collector, withdrawn their objections to an Ameen's report, the lower Appellate Court should not allow the same objections to be revived before it. BHUGOBUTTY BURMONEE *v.* GOUR CHUNDER MUNDUL
[9 W. R., 267

KANTEE CHUNDER DUTT *v.* GOPEE MADHUB NEOGEE . . . . . . 11 W. R., 3

that no notice was served as required by law, having impliedly waived the objection GRISH CHUNDER BANERJEE *v.* BHANOO MOTEE CHOWDHRAIN
[11 W. R., 329

5. ——— *Waiver by judgment-debtor of objection—Right to deduct mesne* ...

6. ——— *Omission to take objection—Remand*—*Held* that the defendant, not having taken an objection to the suit on the ground ...

7. ——— *Suit by infant without a next friend—Objection not taken until case came on appeal when plaintiff had attained majority—Civil Procedure Code (1882), s. 440*— ...

instituted, and she did not sue by a next friend ... the ...

majority. *Held* that, seeing no objection was taken to the suit on the ground that the plaintiff should have sued by a next friend until after she had attained her majority, the irregularity was waived. KAMALAKSHI *v.* RAMASAMI CHETTI
[I. L. R., 19 Mad., 127

WAIVER—*continued.*

8. ——— Effect of waiver—*Landlord and tenant—Waiver of right of forfeiture for non-payment of rent.*—A landlord who has waived his right to sue for the cancelment of a lease on the raiyat's failure to pay six successive instalments is not barred by limitation from suing for cancelment on further breaches of the covenant. DULLI CHAND *v.* MEHER CHAND SAHOO . . 8 W. R., 138

9. — ——— *Waiver of vendor binding on purchaser—Sale for arrears of rent*—The Government, as auction-purchaser of the zamindari right of a pergunnah, having waived all right to cancel the tenures of the talukhdars, and having

CHURN ROY *v.* ASANOOLLAH [2 W. R., Act X, 81

10 — — Waiver of rights under mortgage—*Resumption by Government of mortgaged land under Land Acquisition Act, and re-sale to mortgagor—Omission of mortgagee to claim*

as mortgagee had waived his rights under the mortgage, and that the purchaser from the mortgagor had acquired a title free from the plaintiff's incumbrance. *Quære*—Whether the mortgage claim might not, but for the waiver, have re-attached, on the lands resumed by the Government again coming into the possession of the mortgagor. RAM AWTAR SINGH *v.* TULSI RAM . . . 5 C. L. R., 227

11. ——— Waiver of grounds of enhancement—*Reliance on one ground only—Presumption.*—In a suit for enhancement of rent upon

the inference that the other grounds were waived BONOMALEE CHURN MYTEE *v.* SHOROOP HOOTAIT [14 W. R., 60

12 —— —— — — *Objection as to absence of demand for enhanced rent—Objection as to want of parties—Objection taken for first time on appeal*—Where in a suit for rent at an enhanced rate no objection as to the absence of legal demand for enhanced rent was taken,—*Held* that the suit was properly tried by the Court of first instance on the merits The lower Appellate Court having dismissed the suit on the ground that the inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement and which was not made a ground of appeal *Held*

WAIVER—*continued.*

13. ——— Waiver of right to execute decree—*Agreement to give time to debtor—New contract.*—The granting of a judgment-debtor the indulgence of a temporary stay of the warrant of

14. ——— ——— *Waiver where decree-holder was allowed to perform act under decree in case judgment debtor failed to do so.*—*H C* obtained a decree against *G R* for the reconstruction in the family house, within one month, of

after the reconstruction was begun, but after the

the judgment-creditors' conduct in looking on without

15. ——— Waver of right to interest on arrears of rent—*Receipt of arrears of rent for*

Held that there were facts justifying such an inference, and that their finding could not be reviewed in special appeal DINDOYAL PORAMANICK *v.* TRAN KISHEN PAUL CHOWDHRY [Marsh, 394: W. R., F. B, 117: 2 Hay, 423

16 ——— *Omission to enforce interest under kabuliat—Variation in contract*

MOHUN BOSE . 21 W. R, 36

PEAREE MOHUN MOOKERJEE *v.* BROJO MOHUN BOSE . . . . 22 W. R., 423

17. ——— *Omission to claim interest—Pleading*—Both parties stipulated

WAIVER—*continued.*

for payment of rent on certain dates, and, if not so paid, of a certain rate of interest until paid The rent not having been paid at the time agreed on,—*Held* that the landlord's omission to claim interest, instalment by instalment, for the fractional time that the rent was not paid after it became due, did not justify the plea that the interest stipulated for was not due, or warrant the belief that the plaintiff had waived his claim to interest. RUTTY KANT BOSE *v.* GUNGADHUR BISWAS

[W. R., F. B., 13: 1 Ind Jur., O. S., 6 Marsh., 40

18. ——— Waiver of objection to service of notice of enhancement—*Omission to*

duly served On appeal, the Subordinate Judge of his own motion took up the question of notice, decided that it had not been duly served, and reversed the decree of the lower Court. *Held* that the Subordinate Judge was wrong, for, seeing that the defendants had not appealed from the finding of the first Court which declared that there had been good service, it might fairly be presumed that they had due notice of the claim to enhance, until evidence sufficient to rebut that presumption should be shown. An objection that notice of enhancement has not been properly served is not an objection purely of law, but a mixed objection of law and fact, which may be impliedly waived by the conduct of the parties. *Chunder Monee Dossee* v *Dhuroneedhur Lahory, 7 W. R., 2,* cited and distinguished. SHUSHEE BHOOSUN *v.* MUDDUN MOHUN CHUTTOPADHIYA

[2 C. L. R., 297

19. ——— Agreement come to under mistaken belief—*Agreement to accept provision in satisfaction of claim to maintenance—Mutual mistake, Effect of—Suit by son for partition—Relinquishment of claim.*—The plaintiff's father, a member of an undivided Hindu family, signed an agreement by which he agreed to accept a provision in satisfaction of his claim for maintenance. The *agreement was signed by reason of a mistaken belief* entertained by the plaintiff's father and the other members of the family that there existed an established custom in the family which rendered the property indivisible. *Held,* in a suit by the plaintiff for a partition of the family property liable to parti-

20. ——— *Agreement to accept portion of property for maintenance—Suit*

WAIVER—*continued.*

Under that belief the plaintiff accepted the allotment made to him in 1856 by the then eldest co-heir of a smaller portion of the property than he would be

21 ——— Waiver by renunciation of rights—*Renunciation of rights—Law of waiver—Privileges of office*—It is not law that every right may be renounced. The general rule is power of

attach to his position as a karnavan. CHERUKOMEY *alias* GOVINDEN NAIR *v.* ISMALA . 6 Mad., 145

APPUNI *v.* AYANEPALLI EKANATHA THAVAI VARIKARNAVAN SHANGUNI. APPUNI *v.* VETTUTHADATHA SHAMA . 6 Mad., 401

23.——— Effect of acceptance of mortgage-money on right of purchase—*Condition in favour of purchase by mortgagee*—*A* mortgaged land to *B*, the mortgage instrument providing that *B* should be entitled to purchase the land if it were not redeemed by 12th July 1843. In 1845 *B* accepted from *A* one pagoda in part payment of the mortgage-money. *Held* that this was a waiver by *B* of his right to purchase. VENKATACHARI *v* ANANTACHARI [1 Mad., 69

24. ——— Refusal to receive rent in

WAIVER—*continued.*

of the rent in kind. NARAIN GEER *v.* GOUR SURUN DOSS . . . . . 23 W. R., 368

25. ——— **Withdrawal of objection to sale in execution of decree**—*Effect of, on subsequent right to sue to set it aside.*—The plaintiff purchased certain property from the first and second defendants. The property was subsequently put up for sale by order of the Civil Court in execution of a decree against the first and second defendants, and

CHETTY . . . . 7 Mad., 359

26 ——— **Relinquishment by Hindu widow**—*Relinquishment of title to property by widow—Petition.*—A mere petition by a widow to

BHOOBUN MOHUN PAL . 10 W. R., 98

27. ——— **Agent's right to execute decree obtained by him as agent**—*Civil Procedure Code, 1882, s. 37—Recognized agent—Execution of decree.*—*P* filed a suit in the second class Subordinate Judge's Court at Mahad. As *P* resided at Thana, outside the jurisdiction of the Court of Mahad, she authorized her agent, under a general

his darkhast granting only partial execution Against this order the agent filed an appeal in the District Court at Thana. Then, for the first time, the judgment-debtors challenged the agent's right to represent *P* who was residing within the District Court's jurisdiction. This objection prevailed, and the appeal was dismissed *Held* that the agent could not be prevented from executing the decree which he

[illegible] Bom., 66

28. ——— **Remission of part performance of contract**—*Sum accepted on account of*

WAIVER—*continued.*

bond at the rate of 15 per cent. Default was made when the first and second payments of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum, a title more than the arrears calculated at 9 per cent. In a suit by the creditor,—*Held* that the plaintiff had not waived any right under the bond by accepting the payment on account of interest. NANJAPPA *v.* NANJAPPA

[I. L. R., 12 Mad., 161

29. ——— **Decree payable by instalments**—*Execution of decree—Default—Limitation.*—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due. In 1883 a default was made, and in 1884 the decree-holder

Ramjoti v. Lal, I. L. R., 2 All., ...; and *Asmatullah Dalal v. Kally Churn Mitter, I. L. R., 7 Calc., 56,* distinguished. BUDDHU LAL *v.* REKKHAB DAS . . . . I. L. R., 11 All., 482

30. ——— *Decree payable by instalments, and in default execution for whole amount to issue—Default in payment of instalments—Waiver by plaintiff of right to execute decree—Receipt by plaintiff of overdue instalments.* – By a consent decree passed in a mortgage suit the defendant was ordered to pay to the plaintiff the sum of R1,800 by yearly instalments of R50 payable on 30th April in each year, and in case of default in payment of any instalment the plaintiff was to be at liberty to execute the decree by sale of the mortgaged property. The defendants failed to pay the first instalment, which fell due on the 30th April 1888, and the plaintiff applied for execution and obtained an order for the sale of the property. In order to prevent the sale, the defendants, on the 13th November 1888, paid R60 out of Court, and the application for execution thereupon was allowed to drop The defendants subsequently made the

arrears, but on account of the whole decree; and

WAIVER—*concluded.*

even if they were taken as payments of overdue instalments, they could not by themselves prove a waiver BALAJI GANESH *v.* SAKHARAM PARASHRAM . . . . I. L. R., 17 Bom., 555

31. ——— **Omission to take objection that pottahs and muchalkas had not been exchanged before suit**—*Suit to recover customary dues payable on account of a chattram*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of pottahs and muchalkas, but among other defences they relied upon a plea of limitation. *Held* (1) that the defendants should be considered to have admitted tacitly that the exchange of pottahs and muchalkas has been dispensed with. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE [I. L. R., 16 Mad., 305

WAJIB-UL-URZ.

See COLLECTOR . I. L. R., 15 All., 410

See EVIDENCE—CIVIL CASES — MISCELLANEOUS DOCUMENTS—WAJIB-UL-URZ.
[I. L. R., 2 All., 876
I. L. R., 15 All., 147

See MAHOMEDAN LAW — PRE-EMPTION —CEREMONIES . I. L. R., 9 All., 513

See MAHOMEDAN LAW—PRE-EMPTION—MISCELLANEOUS CASES
[I. L. R., 12 All., 234

See MAHOMEDAN LAW—PRE-EMPTION—PRE-EMPTION AS TO PORTION OF PROPERTY . I. L. R., 10 All., 182
[I. L. R., 11 All., 108
I. L. R., 21 All., 119

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS
[I. L. R., 9 All., 480
I. L. R., 10 All., 472

See MAHOMEDAN LAW—PRE-EMPTION—*RIGHT OF PRE-EMPTION*—WAIVER OF RIGHT OR REFUSAL TO PURCHASE.
[I. L. R., 11 All., 108

See CASES UNDER PRE-EMPTION.

See WASTE LANDS I. L. R., 19 All., 172

——— **Testamentary bequest contained in—**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS — ESTATES ABSOLUTE OR LIMITED . I. L. R., 19 All., 16

WAQF.

See ACT XX OF 1863, s. 18
[15 B. L. R., 167
I. L. R., 3 Calc., 324

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

WARRANT.

See INSOLVENT ACT, s. 50.
[I. L. R., 17 Calc., 209

——— **Arrest or search without—**

See ESCAPE FROM CUSTODY.
[24 W. R., Cr., 45
I. L. R., 19 Mad., 310

See OPIUM ACT, s. 9.
[I. L. R., 24 Calc., 691

See PRIVATE DEFENCE, RIGHT OF.
[7 Bom., Cr., 50
I. L. R., 19 Mad., 349

——— **Service of—**

See PENAL CODE, s. 186.
[I. L. R., 22 Calc., 596, 759
I. L. R., 23 Calc., 898
I. L. R., 24 Calc., 320

1. ——— **Warrants made by Lieutenant Governor of Bengal**—*Seal of Court*—The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. ANONYMOUS . 1 Ind. Jur., N. S., 106

2. ——— **Search warrant**—*Criminal Procedure Code, 1861, ss. 114, 115—Requisites of warrant.*—It is essential to the legality of a search warrant, under s. 114 of the Code of Criminal Procedure, that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary, and that a specified house or place only is to be searched. The warrant must, under s. 115 of that Code, be directed to some other person only when a police officer is not forthcoming. QUEEN *v.* HOSSAIN ALI CHOWDHRY . . 8 W. R., Cr., 74

3. ——— *Criminal Proce-*

[illegible]

[illegible] in the temple, and the Magistrate [illegible] opinion that the nature of the property so buried [illegible] material bearing on the case

[illegible]

Code; and that it was not incumbent on him to wait until the evidence for the prosecution should have been recorded in the presence of the accused. QUEEN-EMPRESS *v.* MAHANT OF TIRUPATI
[I. L. R., 13 Mad., 18

4. ——— *Criminal Procedure Code (Act X of 1882), s. 96—Issue of search warrant in the absence of any inquiry, trial, or other proceeding pending before Magistrate*—Some treasure belonging to the Native State of Radhanpur was missing. The Administrator of

WARRANT—*concluded.*

Radhanpur sent a telegram to the District Superintendent of Police at Ahmedabad, stating that part of the missing treasure was in the possession of the accused, who was a resident of Ahmedabad, and ... In con- ... spector ... gistrate ... issued

Political Superintendent of Palanpur. *Held* that

WARRANT-CASE.

See PARDANASHIN WOMEN
[I. L. R., 21 Calc., 588

WARRANT OF ARREST.

	Col
1. CIVIL CASES	9450
2. CRIMINAL CASES	9153

See ASSAULT ON PUBLIC SERVANT.
[I. L. R., 26 Calc., 630

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
[I. L. R., 25 Calc., 20
L. R., 24 I. A., 137

See MALICIOUS PROSECUTION.
[I. L. R., 19 Bom., 485

WARRANT OF ARREST—*continued.*

See PENAL CODE, s 332.
[I. L. R., 18 All., 246

See WITNESS — CIVIL CASES — DEFAULTING WITNESSES. 13 W. R., 324
[9 W. R., 359
5 Mad., 104
I. L. R., 17 All., 277

See WRONGFUL CONFINEMENT.
[I. L. R., 19 Bom., 72

——— Execution of—

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES
[I. L. R., 24 Calc., 320

——— Illegal issue of—

See PENAL CODE, s 186
[I. L. R., 24 Calc., 320

——— not in legal form

See PENAL CODE, s 186.
[I. L. R., 23 Calc., 896

See PENAL CODE, s 332
[I. L. R., 18 All., 246

——— of Governor General in Council

See BENGAL REGULATION III OF 1818
[6 B. L. R., 392, 459
9 B. L. R., 36

See HABEAS CORPUS.
[6 B. L. R., 392, 459

1 CIVIL CASES

1. — Absence of warrant — *Discharge from custody of Sheriff*—The Court will discharge a prisoner from custody when the jailor holds no warrant for his detention, although he has been properly in the custody of the Sheriff IN THE MATTER OF SHAH SAHIB . 1 Ind Jur., N. S., 19

2. Informality of warrant—*Application for discharge—Civil Procedure Code, 1859, s 273—Delay in bringing up prisoner* —B M and several other prisoners in the custody of the Sheriff of Calcutta for debt, without having been

in a warrant, such as the omission of the time for execution, only renders it irregular, and does not

WARRANT OF ARREST—*continued.*

1. CIVIL CASES—*continued.*

considerable period, does not render his detention illegal. IN RE BHOLANAUTH MULLICK

[Bourke, O. C., 96

3. ———— Form of warrant—*Sufficiency of warrant.*—Where a person had been taken in

4. ———— Writ of Calcutta Small Cause Court, Form of—*Act XII of 1865*—*Fixing subsistence-money*—A writ of the Calcutta Small

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be detained in safe custody for —— weeks, or until he shall sooner perform the said order of the Court" is in point of form a sufficient warrant to the jailor to

5. ———— Warrant directed to Nazir

proper persons to discharge that duty, bearing in

WARRANT OF ARREST—*continued.*

1. CIVIL CASES—*continued*

and an indorsement thereon, professedly under s. 313 of the Civil Procedure Code, was irregularly made by the Naib Nazir, he not having been "the officer entrusted with the execution of the warrant,"—*Held* that such irregularity did not invalidate the arrest. ABDUL KARIM *v.* BULLEN . I. L. R., 6 All., 385

of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and

the Penal Code had been committed. *Held* that this contention could not be allowed, and although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. QUEEN-EMPRESS *v.* JANKI PRASAD . . . . I. L. R., 8 All., 293

7. ———— Validity of warrant—*Liability*

to be in force till the 4th January 18

(defendant No. 2). This fact was not rep... karkun to the Nazir (defendant No. 1) until the 4th January 1877. On the 1st January 1877 the judgment-debtor's debt was paid by Government, and

until he was arrested and brought before the

WARRANT OF ARREST—*continued.*

1. CIVIL CASES—*concluded.*

and the latter made the order for his committal to the civil jail KASTURCHAND *v* RAVJI SADASHIV
[I. L. R., 4 Bom., 65

8. ——— Warrant not exhausted if ...

applications for execution, applied on the 4th of August 1897 for a warrant for the arrest of the judgment-debtor. That application was granted, but the peons sent to arrest the judgment-debtor reported that he had concealed himself, and the Court in consequence struck off the application for execution. On the 29th of November 1897 the decree-holders again applied for the arrest of the judgment-debtor, but that application also was struck off without the arrest having been made

of Civil Procedure, it was *held* that the warrant of arrest issued on the decree holders' application

2. CRIMINAL CASES.

9.——— Arrest in pending case—*Power of Magistrate—Criminal Procedure Code, 1861, s. 68.*—S. 68 of the Code of Criminal Procedure gave a Magistrate jurisdiction on proper evidence to issue a warrant for the arrest of persons in a pending case IN THE MATTER OF SIDESHURY CHOWDHRAIN
[16 W. R., Cr., 50

10.——— Warrant on non-appearance to summons—*Lessee of tolls—Disobedience of*

summoned to appear before the Magistrate to answer the
but
of
the

OF BANKA BIHARI GHOSE
[2 B. L. R., A. Cr., 17 : 11 W. R., Cr., 26

WARRANT OF ARREST—*continued.*

2. CRIMINAL CASES—*continued.*

11. ——— Issue of warrant—*Complaint on oath—Report of police officer—Criminal Proc...*

12. ——— Arrest on report *of policeman for offence for which arrest without warrant might be made.*—Where a policeman in whose sight a theft was committed arrested the

MAHAR . . . . . 5 Bom., Cr., 99

13. ——— *Validity of warrant—Criminal Procedure Code (X of 1872), s. 157—Magistrate out of jurisdiction—Extradi...*

might issue such a warrant from a place in foreign territory. REG *v.* LOCHA KALA
[I. L. R., 1 Bom., 340

14. ——— Procedure on warrant—*Act XII of 1867.*—When a prisoner was arrested by

15 ——— Operation of warrant—*Detention of prisoner*—The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate MUTHOORA NATH CHUCKERBUTTY *v* HEERA LALL DOSS 17 W. R., Cr., 55

A Magistrate therefore is not at liberty to retain

16. ——— *Warrant issued to unofficial person—Criminal Procedure Code (Act X of 1872), s 161—Act XXV of 1861, s. 77.*—Under s 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers, and unless the urgency is imminent. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds, and in the absence of evidence there can be no grounds IN THE MATTER OF THE PETITION OF SURENDRONATH ROY QUEEN *v* SURENDRONATH ROY
[5 B. L. R., 274 : 13 W. R., Cr., 27

WARRANT OF ARREST—*continued.*

2. CRIMINAL CASES—*continued.*

17. ———— *Criminal Procedure Code (Act XXV of 1861), s. 68—Act X of 1872, ss 142 and 150—Detention of accused.*—A warrant issued under s. 68, which was a warrant of arrest as described under s 76 (Form B), is only for the purpose of bringing an accused person before the Magistrate It was not a warrant for

BANERJEE. QUEEN v. PURNA CHANDRA BANERJEE QUEEN v. KALI SIRKAR

[4 B. L. R., Ap., 1: 13 W. R., Cr., 1

18. ———— *Detention of accused—Order sanctioning detention for indefinite period—Remand of accused*—*Held* that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal.
the time
before a
period n
the Criminal Procedure Code, 1861. No remand without a hearing can last for a longer period REG v. SUKKYA VALAD DHAKU . . 5 Bom., Cr., 31

19. ———— Form of warrant—*Omission to seal warrant—Criminal Procedure Code, 1869, s. 76—Requisites of good warrant.*—A warrant issued under s 76 of the Code of Criminal Procedure should be stated, should describe the person to be apprehended under it with reasonable particularity,

the prisoner apprehended under it was released by the High Court IN RE HASTINGS . 9 Bom., 154

20. ———— *Form of endorsement on warrant.*—An endorsement on a warrant under s 79 of the Code of Criminal Procedure should be regularly made by name to a certain person in order to authorize him to make the arrest DURGA TEWARI v. RAHMAN BUKSH 4 C. W. N., 85

21. ———— *Act XIII of 1856, s. 59—Error in warrant not affecting con-*

was merely an error of procedure, and did not affect

15 Bom., Cr., 1

22. ———— *Warrant not containing specification of offence.*—A warrant which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed IN RE BIDHUMUKHI DEBI . . . . 8 B. L. R., Ap., 129

S C BIDHOOMOOKHEE DABEE v. SREENATH HALDAR . . . . 15 W. R., Cr., 4

23. ———— Informality in warrant—*Criminal Procedure Code, 1869, s. 404—Power of, High Court—Irregularity in process of arrest and attachment*—The High Court was not empowered to interfere under the provisions of s. 404 of the

arrest and for the attachment of his property, before applying to the High Court under s. 404 of the Criminal Procedure Code, should make application to the Magistrate issuing such process for his discharge and the release of his property, on the ground of the informality of the warrants QUEEN v. BISHESHUR PERSHAD

[2 N. W., 441: Agra, F. B., Ed. 1874, 236

24. ————Mode of arrest in foreign

11 Bom., Cr.

25. ———— *Warrant to arrest and imprison—Form of warrant—Service of warrant—Irregularity—Defect in warrant—Foreigners, Arrest of—Act III of 1864, s. 3—Criminal Procedure Code, s. 491.*—On the 3rd July 1894, certain foreigners, resident in Bombay, having been arrested by the police and sent to jail under warrant issued under ss 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (Act X of 1882) and under Stat 31 Car. II, c. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. A separate warrant was issued in the case of each of the foreigners in question; and all were in the same form. The warrant directed the person whose name appeared in it forthwith to "remove himself from British India by sea, and it further contained the following words. "All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said ( ) in safe custody in the jail of Bombay under s 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government, and was directed to the Commissioner of Police and to the Superintendent of the Jail. *Held* that the warrants were not valid warrants for the following

WARRANT OF ARREST—*concluded.*

2 CRIMINAL CASES—*concluded.*

reasons: (1) they were irregular in that they contained an order to the person named in them to do a certain thing with a further conditional order for his imprisonment in the event of his not doing it. There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorizing his arrest and detention in jail. (2) The persons named in them were not indicated with sufficient certainty and par[illegible] tion of [illegible] to be [illegible] dence. [illegible] them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant. The particular route to be specified under s 3 of Act III of 1864 is intended to be a route in British India, and not a route beyond the high seas The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (4) *Per* STARLING, *J.*—The warrants were also defective, inasmuch as they bore no seal. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY

[I. L. R., 18 Bom., 636

26. ——————— *Warrants issued under Act XIII of 1859—Execution outside jurisdiction—Criminal Procedure Code (1882), s. 83—Magistrate, Jurisdiction of—Breach of contract of service.*—S. 83 of the Criminal Procedure Code applies to warrants issued under s. 1 of Act XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrates issuing them. QUEEN-EMPRESS *v* KATTAYAN

[I L. R., 20 Mad., 235

QUEEN-EMPRESS *v.* MUTHAYYA

[I. L. R., 20 Mad., 457

GAURI SHANKAR *v.* MATA PRASAD

[I L. R., 20 All., 124

WARRANT OF ATTORNEY.

1. ——— Extent and operation of warrant—*Civil Procedure Code, 1859, ss 17 and 49—Acceptance of service and appearance—Act XX of 1862, s. 7.*—A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, etc., in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent [illegible]

to warrants of attorney for the entering up of judgments in the High Court which were in existence

WARRANT OF ATTORNEY—*concluded.*

before the 1st July 1862. KHALUT CHUNDER GHOSE *v* SARODASOONDERY DOSSEE

[Bourke, O. C., 244

2. ——— Limitation Act, 1859—*Entering up judgment.*—The statute of limitation is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL *v.* HYDER JUNG BAHADOOR . . . 1 Ind. Jur., O. S., 58

WARRANT OF COMMITMENT.

——— Signature of Magistrate—*Criminal Procedure Code, 1872, s. 303.*—The signature of a Magistrate to a warrant of commitment under s 303 of the Code of Criminal Procedure, 1872, should not be affixed by a stamp. SUBRAMANAYA *v.* QUEEN . . . I. L. R., 6 Mad., 396

WARRANT OF EXECUTION.

1. ——— Executing a warrant for attachment of property—*Penal Code (Act XLV of 1860), ss. 353, 147, 114—Assaulting a public servant in the discharge of his duty—Contents of the warrant—Form of the warrant—Non-production of evidence as to terms of warrant* [illegible]

obstructing a public officer in the discharge of his duty, *viz*, the execution of a distress-warrant for attachment of property, cannot stand. CHUNDER COOMAR SEN *v* QUEEN-EMPRESS 3 C. W. N., 605

TAFAZZUL AHMED CHOWDHRY *v* QUEEN-EMPRESS

[I. L. R., 26 Calc., 630

2. ——— Extension of time for operation of warrant—*Act X of 1859, s 88—Jurisdiction.*—Where a warrant of execution under Act X of 1859, s 88, was extended for four days after [illegible]

v. DIDAR BAX SHAH

[3 B. L. R., A. C., 10: 11 W. R., 326

3. ——— Return of warrant—*Public servant—Resistance to public servant—Penal Code, s. 183—Civil Procedure Code, 1882,* [illegible]

that the conviction was bad. IN THE MATTER OF

WARRANT OF EXECUTION—*concluded.*

THE PETITION OF ANAND LALL BERA. ANAND LALL BERA *v.* EMPRESS
[I. L. R., 10 Calc., 18 : 13 C. L. R., 209

4. ———— Irregularity in warrant—*Civil Procedure Code, 1859, s. 222—Civil Procedure Code, 1877, 1882, s. 251*—An execution-sale of the right, title, and interest in land was set aside by the Court, on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the Judge, but by the Munsarim of the Court, and at a second sale the property was sold to other purchasers, who, as well as the judgment debtor, were sued by

dismissed with costs RAM DAYAL *v.* MAHTAB SINGH . . . . I. L. R., 7 All., 506

WARRANTY, BREACH OF—

See CHARTER PARTY . 8 B. L. R., 544

See CONTRACT—BREACH OF CONTRACT
[14 B. L. R., 180 : 23 W. R., 136
I. L. R., 13 Calc., 237
L. R., 13 I. A., 60

See CONTRACT ACT, s. 78.
[I. L. R., 4 Calc., 801

See RIGHT OF SUIT—MISREPRESENTATION
[I. L. R., 24 Bom., 166

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY

WARRANTY OF TITLE.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY.

See SALE IN EXECUTION OF DECREE SETTING ASIDE SALE—RIGHTS OF PURCHASERS . I. L. R., 2 Bom., 258
[I. L. R., 17 Mad., 228

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

See CASES UNDER VENDOR AND PURCHASER—CAVEAT EMPTOR.

WASHERMAN.

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 1 . I. L. R., 1 Mad., 174

See WILL—CONSTRUCTION.
[9 B. L. R., Ap., 4

WASTE.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS AND WASTE

WASTE—*concluded.*

See HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS TO RESTRAIN WASTE, ETC —WHO MAY SUE.
[I. L. R., 6 Calc., 198
6 Moore's I. A., 433
I. L. R., 9 Calc., 817
Marsh, 623

See LANDLORD AND TENANT — FORFEITURE — BREACH OF CONDITION.
[I. L. R., 10 Mad., 351
I. L. R., 22 Mad., 39

See LIMITATION ACT, 1877, ART 125 (1859, s. 1, CL. 16) . 7 B. L. R., 131

———— by mortgagee in possession.

See MORTGAGE—ACCOUNTS
[I. L. R., 15 Mad., 290

1 ———— Limitation—*Allegation of waste—Prayer for protection from contemplated waste—Held per* PHEAR J., that where a suit was one to prevent contemplated waste, it was not barred by lapse of time. GHOSE *v.* AMIRTAMAYI DASI
[4 B. L. R., O. C., 1 : 12 W. R., O. C., 13

BISWANATH CHUNDER *v.* KHANTAMANI DASI
[7 B. L. R., 131

2. ———— Liability for waste—*Hindu*

been in her possession, the suit being one wherein defendant was charged with devastation in respect of such property only,—*Held* that defendant was not liable in that suit to be made answerable out of her husband's assets for any devastation which he might have committed. STAVES *v.* DIAS
[10 W. R., 444

WASTE LANDS.

See LANDLORD AND TENANT—MIRASIDARS
[I. L. R., 1 Mad., 205

See ONUS OF PROOF — LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 9 Mad., 175

See SETTLEMENT—EVIDENCE OF SETTLEMENT . I. L. R., 26 Calc., 792

See SETTLEMENT—RIGHT TO SETTLEMENT
[4 Mad., 429

See SETTLEMENT—SUBJECTS OF SETTLEMENT . . 1 Mad., 12, 407

See VALUATION OF SUIT—SUITS—WASTE LANDS, SUIT FOR . 7 W. R., 349

———— Grant of—

See MORTGAGE—FORM OF MORTGAGES
[I. L. R., 21 Calc., 883
L. R., 21 I. A., 96

———— made cultivable.

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 24 Calc., 256

WASTE LANDS—*continued.*

——— Right of village to pasturage on—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.
[I. L. R., 21 Bom., 684

1. ——— Presumption from land lying waste—*Evidence as to possession.*—The fact of land lying waste does not of itself show that no one is in possession. MAHOMED ALI *v.* SHURUM ALI
[8 W. R., 422

2. ——— Ownership of waste land—*Presumption as to possession.*—Where land is waste and there is no visible sign of occupation, the possession must be taken to go with the right, and the [illegible]

3. [illegible]

INDIA IN COUNCIL . I. L. R., 26 Calc., 782
[3 C. W. N., 695

4. ——— Possession of waste land—*Limitation—Presumption—Proof of title.*—There may be such possession of waste lands as to protect a suit from being barred by limitation; and where the question of possession is doubtful, a presumption will arise in favour of the party who proves title. MAHOMED BASSIR *v.* KUREEM BUKSH
[11 W. R., 268

5. ——— *Possession, Presumption of, from evidence of title.*—In disputes as to the right to possession of waste and jungle lands, it is only in cases where neither party has exercised [illegible]

[illegible] C. L. R., [illegible]

6. ——— *Title to uncultivated or jungle lands—Adverse possession—Limitation—Acts of ownership.*—If adverse possession for a sufficiently long time is proved, the title of a person to uncultivated or jungle land may be barred by limitation in the same manner and to the same extent as in the case of cultivated land, the evi- [illegible]

See WATSON *v.* GOVERNMENT
[B. L. R., Sup. Vol., 182: 3 W. R., 73

7. ——— Right to use of waste land—*Permissive use of, by tenants—Right of landlord to erect building on—Works of permanent character executed by licensee—Easements Act (V of 1882), ss. 60, 61.*—In a suit by a zamindar to have his right declared to build a house on some waste land in the mouzah, the defendants, who were tenants in the

WASTE LANDS—*continued.*

[illegible] having acquired no right adverse to the plaintiff as owners, by prescription or otherwise, in the land, [illegible]

incurred expenses, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed. LAND MORTGAGE BANK OF INDIA *v.* MOTI
[I. L. R., 8 All., 64

8 ——— *Rights of zamindar in respect of waste lands—Provisions of wajib-ul-urz as to rights of pasturage.*—*Held* that a general provision contained in a wajib-ul-urz that [illegible]

[I. L. R., 19 All., 172

9 [illegible]

[2 Agra, 258

10 ——— *Act to reclaim waste lands—Suit to contest award by Board of Revenue—Extension of time—Institution of suit.*—The Court cannot extend the period of thirty days allowed by s. 5, Act XXIII of 1863, for preferring a suit to contest an award by the Board of Revenue. The filing of a vakalatnama is not an institution of such a suit. TARANATH DUTT *v.* COLLECTOR OF SYLHET
[5 W. R., Waste Land Court Ref., 1

11. ——— ss. 8, 18—*Suit for possession—Statute, Interpretation of.*—Where an Act expressly takes away one particular remedy which would otherwise have been open for enforcing a right of property, or in any other particular interferes with proprietary rights, but does not, in express words or by necessary implication, declare that those rights shall cease, the method of interpretation which ought to be adopted is to give effect to the Act exactly so far as its words extend and no further. [illegible]

making it apply to waste lands of Government, and by understanding the claims and objections mentioned

WASTE LANDS—*concluded.*

in the Act as claims in respect of Government land, and objections with the same limitation. KRISTO CHUNDER DASS *v.* STEEL I. L. R., 12 Calc., 279

12. ———— s. 18—*Suit for compensation for land wrongly sold as waste* —A purchaser of land sold as waste land under Act XXIII of 1863 cannot be compelled to grant a pottah to a person alleging himself to have been in occupation of the [illegible]

[illegible] W. R., [illegible]

WATER.

———— Liability for damage done by—

See EMBANKMENTS.
I. L. R., 3 Calc., 776

———— Rights concerning—

See CASES UNDER INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

See CASES UNDER RIGHT TO USE OF WATER.

———— Right to use of—

See EASEMENT . I. L. R., 18 Mad., 320

See MADRAS FOREST ACT, s. 10.
I. L. R., 20 Mad., 279

WATER-CESS.

See CESS . I. L. R., 10 Mad., 282

See MADRAS IRRIGATION CESS ACT, s. 1.
I. L. R., 12 Mad., 407
I. L. R., 19 Mad., 24

WATER-COURSE.

———— Obstruction of—

See EASEMENT . I. L. R., 23 Bom., 506

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
I. L. R., 18 Mad., 28
I. L. R., 20 Bom., 283

———— Right to use of—

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

See CASES UNDER RIGHT TO USE OF WATER.

WATER-SUPPLY.

———— Causing diminution of—

See MISCHIEF . I. L. R., 1 Mad., 282
I. L. R., 10 Bom., 183

WEIGHTS AND MEASURES.

———— Fraudulent use of—*Penal Code, s. 266—Fraudulent intention.*—The mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code; a fraudulent intent must be charged and proved. REG. *v.* DAMO DHAR DALJI
1 Bom., 151

GOVERNMENT *v.* KANGALEE MUDUK
18 W. R., Cr., 7

WELL.

———— Right to use—

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER
I. L. R., 20 Mad., 389

WHARFAGE.

See BILL OF LADING.
I. L. R., 4 Calc., 736
I. L. R., 5 Calc., 477
I. L. R., 7 Bom., 386

See INTERPLEADER SUIT.
I. L. R., 18 Bom., 231

WHARFINGER.

See BILL OF LADING.
I. L. R., 4 Calc., 736

WHIPPING.

See CASES UNDER SENTENCE—WHIPPING.

[illegible] —*Act VI of* [illegible] hipping [illegible] fenders.

[illegible] Bom., Cr., 70

2. ———— *First conviction of adults—Substituted punishment.*—In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first offence or otherwise, whipping can only be in lieu of, and not added to, any other punishment. QUEEN *v.* ABDOOL
W. R., 1864, Cr., 33

QUEEN *v.* KANTIRAM . 1 W. R., Cr., 24

QUEEN *v.* TONAOKOCH . 2 W. R., Cr., 63

QUEEN *v.* AMARUT . 4 W. R., Cr., 20

3. ———— *Whipping Act (VI of 1864), s. 2—Whipping in lieu of fine or other punishment under the Penal Code (Act XLV of 1860).*—When an accused person is sentenced to [illegible] (VI of [illegible] ment or [illegible] nal Code [illegible] punish- [illegible] punish- [illegible] QUEEN-

EMPRESS *v.* DAGADU . I. L. R., 18 Bom., 357

4. ———— *Act VI of 1864*—Under Act VI of 1864 (the Whipping Act), a juvenile

WHIPPING—*continued.*

offender means a person under the age of sixteen years. REG v. MUHAMMAD ALI VALAD ABDUL ALI [8 Bom, Cr., 9

5. ——— *Act XI of 1864, ss. 5, 10—Criminal Procedure Code, s. 392*—By the term "juvenile offender" in s 5, Act VI of 1864 (Whipping Act), is meant an offender under the age of sixteen years *Reg. v Muhammad Ali, 8 Bom., Cr., 9*, referred to. EMPRESS v. DIN ALI [I. L. R., 6 All., 482

6. ——— **Sentence of whipping when allowable**—*Act VI of 1864, s. 4—Offence after previous conviction.*—The punishment of whipping under s 4, Act VI of 1864, can only be inflicted on a second conviction of a person who, having served a sentence of imprisonment, again commits a crime. QUEEN v. UDAI PATNAIK [4 B. L. R., A. Cr., 5; 12 W. R, Cr., 68

7. ——— *Offence after previous conviction—Previous conviction not shown.*—

after previous conviction. REG. v. SURYA BIN KRISHNA MANDAVKAR . 3 Bom., Cr., 38

REG. v. BABJI VALAD BAPU . 4 Bom., Cr., 5

8. ——— *Act VI of 1864, s. 3—Second conviction for offence committed before*

9. ——— *Previous conviction*—A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. ANONYMOUS . 5 Mad., Ap., 1

ANONYMOUS . . . 5 Mad., Ap., 39

10. ——— *Theft in dwelling-house—Act VI of 1864, s. 3—Previous conviction of theft.*—A prisoner convicted of "theft in a

... 4 Bom., Cr., 68

11. ——— *Act VI of 1864, s. 7—Conviction of dishonestly receiving stolen property—Previous conviction for theft.*—P was

stolen property, the punishment of whipping was illegal. EMPRESS v. PARTAB [I. L. R., 1 All., 666

12. ——— *Conviction*

offences being portions of one continuous criminal act, was sentenced on the first head of charge to one year's rigorous imprisonment, under s 457 of the Penal Code, and on the second head of charge to receive twenty stripes, under s. 2 of the Whipping

13. ——— *Act VI of 1864, s. 7—Conviction of theft*—A sentence of whipping cannot, with reference to Act VI of 1864, s 7, be passed on

Code, as t

tences of

three years

14. ——— *Attempt at house-breaking with view to theft.*—In the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal. REG. v. YELLA VALAD PARSHIA . . 3 Bom., Cr, 37

15. ——— *Substitution of whipping for other punishment—Sentence—Theft.*—Whipping may be substituted for any other punishment for the offence of theft in a dwelling-house. QUEEN v. JUNGHOO KHAN . 3 W. R., Cr., 36

16. ——— *Act VI of 1864, s 7—Whipping in addition to other sentences.*—A sentence of whipping passed on a person who is already under sentence of death, or transportation, or

... Mad., 06

17. ——— *Act VI of 1864—Power of Magistrate.*—When a Magistrate, in exercise of the powers conferred by s. 46 of the Criminal Procedure Code, 1861, passed a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Penal Code,—*Held per* PEACOCK, *C.J.*, and PHEAR and SETON-KARR, *JJ.*, that he could not, in addition to the penalties prescribed by the

WHIPPING—*continued.*

the maximum of imprisonment which he is competent to award. *Held per* MACPHERSON and JACK-

RUTTUN BEWA *v.* BUHUR. JHOWLA *v.* BUHUR [14 W. R., Cr., 7

18. ———— *Act VI of 1864—Penal Code, ss. 325, 342, 378—Criminal Procedure Code (Act XXV of 1861), s. 46—Cumulative sentences.*—Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325, and to whipping with twenty stripes for the offence of that under s. 378 of the Penal Code, it was held (KEMP and

prescribed by the Penal Code, to sentence the prisoner to whipping. *Nassir v. Chunder, B. L. R., Sup. Vol., 951,* not followed. MANIRUDDIN *v.* GAUR CHANDRA SHAMADAR [7 B. L. R., F. B., 165 : 15 W. R., Cr., 89

19. ———— *Magistrate of*

tence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. EMPRESS *v.* BHAGVANTA RAVJI [I. L. R., 7 Bom., 303

20. ———— *Whipping in addition to imprisonment—Criminal Procedure Code, 1872, ss. 305, 310.*—In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge (who referred to ss 305 and 310, Act X of 1872), the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out. HUR CHUNDER KULAL *v.* JAFER ALI . . . 20 W. R., Cr., 72

21. ———— **Grounds for sentence of whipping**—*Statement of grounds in judgment.*—When a sentence of whipping is imposed, the grounds for that punishment should be stated on the judgment. BADIYA *v.* QUEEN. I. L. R., 5 Mad., 158

22. ———— *Previous convictions, Proof of—Kyfeut.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous

WHIPPING—*concluded.*

convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way: a mere kyfeut is no evidence whatever. QUEEN *v.* NUZEE NUSHYO . . . 15 W. R., Cr., 52

23. ———— **Mode of infliction of sentence of whipping**—*Stay of sentence, Grounds for—Act VI of 1864, ss. 11 and 12.*—Meaning of the words "execution shall be stayed" in Act VI of 1864, s. 11. Ss. 11 and 12 together mean that a man sentenced to whipping is not to be whipped unless in a fit state to bear it; the whipping should not

from the date of sentence provided in s. 9 of Act VI of 1864. ANONYMOUS . 6 Mad., Ap., 38

This ruling was held to be applicable to s. 310 of the Code of Criminal Procedure, 1872. ANONYMOUS . . . . . 7 Mad., Ap., 30

WHIPPING ACT (VI OF 1864).

See CASES UNDER WHIPPING.

WIDOW.

See CO-WIDOWS.

See DOMICILE . I. L. R., 19 Bom., 697

See HINDU WIDOW.

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 19 All., 169
I. L. R., 21 Calc., 157
L. R., 20 I. A., 155

See MAHOMEDAN LAW—INHERITANCE
[5 W. R., 231
I. L. R., 3 Calc., 702
17 W. R., P. C., 108
11 Bom., 104
I. L. R., 11 Calc., 14
I. L. R., 13 All., 230
L. R., 17 I. A., 73
I. L. R., 19 All., 169
I. L. R., 21 Bom., 118
I. L. R., 21 Mad., 27
I. L. R., 25 Calc., 9
L. R., 24 I. A., 196

See MAHOMEDAN LAW—WILL
[I. L. R., 25 Calc., 5
L. R., 24 I. A., 196

———— **Lien of**—

See CASES UNDER MAHOMEDAN LAW—DOWER.

WIFE.

See CASES UNDER HINDU LAW—CONTRACT—HUSBAND AND WIFE.

See HINDU LAW—HUSBAND AND WIFE. [I. L. R., 13 All., 136

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO PARTITION—WIFE.

See CASES UNDER HINDU LAW—PARTITION—SHARES ON PARTITION—WIFE.

See HUSBAND AND WIFE.

See LUNATIC . I. L. R., 15 All., 29 [I. L. R., 23 Bom., 653

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS

See WILL—CONSTRUCTION. [4 B. L. R., O. C., 53 I. L. R., 13 Mad., 379 I. L. R., 22 Bom., 774

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES. [I. L. R., 18 Bom., 468

——— Action for harbouring—

See RESTITUTION OF CONJUGAL RIGHTS. [I. L. R., 1 Bom., 164

——— Custody of—

See HABEAS CORPUS . 13 B. L. R., 160

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . . 23 W. R., 178 [I. L. R., 12 Bom., 110

See MAHOMEDAN LAW—CUSTODY OF WIFE . . . 5 B. L. R., 557 [13 B. L. R., 160

——— Evidence of—

See EVIDENCE—CRIMINAL CASES—HUSBAND AND WIFE [B. L. R., Sup. Vol., Ap., 11 7 Bom., Cr., 50

——— Maintenance of—

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

——— Relinquishment of—

See BIGAMY . I. L. R., 19 Calc., 627

——— Removal of husband's property by—

See THEFT . . . 6 Bom., Cr., 9 [8 Bom., Cr., 11 1 Mad., Ap., 23 I. L. R., 17 Mad., 401

WILD ANIMALS.

1. ——— Animals feræ naturæ—*Escape of wild animals kept in confinement—Return or pursuit of such animals.*—Wild animals are no

WILD ANIMALS—*concluded.*

longer the property of a man than while they continue in his keeping or actual possession; but if they regain their natural liberty, his property ceases until they have a mind to return, which is only to be [illegible]

2. ——— *Capture of wild* [illegible]

acquired no property in the elephant. MAKATH UNNI MOYI *v* MALABAR KANDAPUNNI NAIR [I. L. R., 4 Mad., 268

3. ——— *Escaped elephant—Ownership—Recapture.*—A tame female elephant escaped from her master's field in company with a [illegible]

offered the reward of Rs200 to the defendant and [illegible]

[illegible]

WILL.

See COSTS—COSTS OUT OF ESTATE [I. L. R., 25 Calc., 553

See DOMICILE I. L. R., 4 Calc., 106

See CASES UNDER HINDU LAW—WILL

See LAND TENURE IN CALCUTTA [1 Moore's I. A., 305, 399

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 15 Mad., 380

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS. [I. L. R., 1 Mad., 366

WILL—*continued.*

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R., 17 Bom., 1
L. R., 19 I. A., 170

See CASES UNDER MAHOMEDAN LAW—WILL.

See MALABAR LAW—WILL.

See MORTGAGE—FORM OF MORTGAGES.
[I. L. R., 1 All, 753

See CASES UNDER PROBATE

See TRUST . I. L. R., 18 Bom., 551

——— Construction of—

See DEED—CONSTRUCTION
[I L. R., 20 Calc., 373

See LIMITATION ACT, 1877, s 10.
[I. L. R , 8 Calc., 788
I. L. R., 14 Bom., 476

See LIMITATION ACT, 1877, ART. 132.
[I. L. R., 15 Calc., 66
L. R., 14 I. A., 137

——— Construction of, Suit for—

See COSTS—COSTS OUT OF ESTATE.
[I. L. R., 15 Calc., 725
L. R, 15 I. A., 127
I. L. R., 21 Calc, 683

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 20 Calc., 906

——— Decision as to construction of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R , 20 Calc., 888

——— Decision as to genuineness of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 16 Mad, 380
[I. L. R., 20 Calc., 906
I. L. R., 21 Bom., 563

——— Execution of, Question of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
[I. L. R., 20 Bom., 238
I. L. R., 21 Bom., 335

——— Exemplification of—

See SUCCESSION ACT, s. 237.
[8 B. L. R., Ap., 76

——— Nuncupative—

See HINDU LAW—WILL—NUNCUPATIVE WILLS.

——— Power to make—

See SALSETTE, LAW APPLICABLE IN.
[I. L. R., 19 Bom., 680

——— Question of validity of—

See CERTIFICATE OF ADMINISTRATION—PROCEDURE . . 11 W. R., 341
[17 W. R., 277
I. L. R., 16 Bom., 712

WILL—*continued.*

——— Revocation of—

See HINDU LAW—WILL—NUNCUPATIVE WILLS . . I. L. R, 3 Calc., 626

See SUCCESSION ACT, s. 56.
[I. L. R., 1 Calc, 158

——— Statement in—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS I. L. R., 1 Bom., 561

See EVIDENCE ACT, 1872, s 32, CL. 6
[I. L. R., 20 Bom., 562

——— Suit by person claiming under—

See CIVIL PROCEDURE CODE, 1882, s 50.
[I. L. R., 6 Bom., 73

1. EXECUTION.

1. ——— Succession Act, s. 50—*Signature of testator—Nature of execution required.*—To entitle the executor to probate, the signature of the testator must be that of a conscious person, and not the results of mere mechanical movement of the hand KALEE TARA DOSSIA *v.* NOBIN CHUNDER KUR . . . . 21 W. R., 84

2. ——— *Execution of will by impression of facsimile of the name—Succession Act, s. 50.*—A testator, who for a number of years [illegible]

NIRMAL CHUNDER BANDOPADHYA *v.* SARATMONI DEBYA . . . . I. L. R., 25 Calc, 911
[2 C. W. N., 642

3. ——— *Want of proof of due execution and of knowledge by testatrix of contents of will.*—Where the defendant claimed the [illegible]

and that at the time of the execution the nature and contents of the documents were well known to her, the Court refused to act upon it. HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS
[I. L. R., 16 Bom., 229

4. ——— *Probate and Administration Act (V of 1881), s 50—Evidence as to the execution of a will by a person near death.*—On a question of fact raised in 1887, whether an alleged testator had or had not been able to duly [illegible]

WILL—*continued.*

1. EXECUTION—*continued.*

the testator, and as to the genuineness of his signature. ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI . . . . I. L. R., 21 Calc., 1

5. ———— *Evidence as to execution—Duty of Judge.*—The question whether an alleged Hindu will was genuine or not was raised by the relations of the deceased, on an application, under the Probate and Administration Act (V of 1881), for administration with the will annexed, filed by the proponent. It was held upon evidence, which was

usages and habits of thought DOWLAT KOER *v.* RAMPHUL DAS . . . I. L. R., 25 Calc., 459
[L. R., 25 I. A., 21
2 C. W. N., 177

6. ———— *Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding on evidence of witnesses.*—In all cases in which the evidence is conflicting, it is the duty of a Court of appeal to have great regard to the opinion formed by the Judge, in whose presence the witnesses gave their evidence, as to the degree of credit to be given to it; and probably the advantage of hearing the witnesses give their evidence is of special value where there is conflict between them as to the mental capacity of a person whose conduct they have observed, and whose state of mind they depose to for the original Court has not merely the better opportunity of judging of the truthfulness of the evidence from the manner in which it is given, but also of judging how far the witnesses possess those qualities on which depends much of the value of

on the ground that at the time the will was alleged to have been made, the mental capacity of the

to know he was authorizing, the execution of a document as his will, but also that he knew and approved of the contents of the instrument, and in such cases of disputed execution the Judge should consider and express an opinion upon both these questions In ordinary cases execution of a will by a competent testator raises the presumption (sufficient, if nothing appears to the contrary, to establish) that he knew and approved of the contents of the will.

WILL—*continued.*

1. EXECUTION—*continued.*

CHUNDER BISWAS *v.* RASHMOHINI DASSI
[I. L. R., 21 Calc., 279

given instructions. RASH MOHINI DASI *v.* UMESH CHUNDER BISWAS . I. L. R., 25 Calc., 824
[L. R., 25 I. A., 109
2 C. W. N., 321

7. ———— *Proof of execution of will—Probabilities—Evidence.*—The fact of the execution of a will was disputed by a testator's relations. They impugned the will mainly on the

to execute such a will, but contended that, having long deferred the execution, he had died without having effected it. To outweigh the strong and satisfactory evidence upon which the affirmative of due execution rested, it would have been necessary that the improbabilities should have been cogent and clearly made out But in their Lordships' opinion, it was neither the one nor the other, and was based

8. ———— *Suit by testator's son contesting validity of will—Alleged testamentary incapacity.*—Although the mental faculties of

WILL—*continued.*

1. EXECUTION—*continued.*

full senses." He was feeble in body. The vigour of

he was incapable of understanding such business as fell to his lot, or of regulating the succession to his property At the hearing of the suit, it was alleged that he was subject to insane delusions, as to which, however, the Courts below concurred in finding that they had not been shown to have existed The statements made by him alleged to have been the result of delusion, had not been shown to be altogether without foundation. As to this, their

of foundation that no one, save an insane person, would have entertained it.

facts proved in this. SAJID ALI *v.* IBAD ALI
[I. L. R., 23 Calc., 1
L. R., 22 I. A., 171

9. ——— ——— *Incapacity from illness—Influence not amounting to coercive influence.*—A Khoja Mahomedan resident in Bombay made his will in 1886, appointing his wife, and his eldest son by a former wife, to execute it The testator died on the 9th February 1891, having, at different times, in the interval, made four codicils. The widow, applying for probate of all the above, propounded a fifth codicil, alleging it to have been made by her husband on the 4th February 1891.

the ground of undue influence, if the codicil had been in fact executed, but because at the time of

codicils only. The Appellate High Court granted probate of the will and of the five codicils, finding that no undue influence had been exercised, and that *the fifth had been executed by the testator with* knowledge

not evidence, and there was not, to show coercion

affirmed the judgment of the original Court, finding the evidence to have left open the inference that the testator had been at the time when it was alleged by the widow that he had made this codicil too exhausted and ill for such a testamentary act. SALA MAHOMED JAFFERBHAI *v.* DAME JANBAI
[I. L. R., 23 Bom., 17
L. R., 24 I. A., 146
1 C. W. N., 481

WILL—*continued.*

1. EXECUTION—*concluded.*

2. ATTESTATION.

such directions being imperative and not merely declaratory. *Held* that the words "in the presence of the testator," in cl. 3 of s 50 of the Succession Act,

11. ——— Presence of witnesses—Succession

tor. *In the goods of Roymoney Dossee, I. L. R., 1 Calc., 150,* and *Hurro Sundari Dabia* v. *Chunder Kant Bhuttacharjee, I. L. R., 6 Calc., 17,* cited. IN THE MATTER OF THE PETITION OF HEMLOTA DABEE
[I. L. R., 9 Calc., 226

S. C. GRISH CHUNDER BANERJEE *v.* HEMLOTA DEBI 11 C. L. R., 359

attesting witness of its execution under the provisions of the Succession Act. *In the goods of Bailey, 1 Curt., 914,* and *Smith v. Harris, 1 Rob., 262,* distinguished. IN THE GOODS OF NANABHAI SORABJI MESTRI. AVABAI *v.* PESTANJI NANABHAI
[11 Bom., 87

presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." A testator signed his will in the presence of a witness who subscribed it in his presence, and some time afterwards, upon the arrival of another witness, the testator, in the

WILL—*continued.*

2. ATTESTATION—*continued.*

joint presence of the former witness and the other subscribing witness, acknowledged his subscription at the foot of the will. The second witness then subscribed the will, and the first witness in his and the testator's presence acknowledged his subscription, but did not re-subscribe. *Held* by the Judicial Committee (affirming the decision of the Supreme Court

[3 Moore's I. A., 395

14. ———— Acknowledgment of signature by testator.

15 ———— Sufficiency of attestation—*Succession Act (X of 1865), s. 50—Probate—Hindu Wills Act (XXI of 1870), s. 2.*—By the Succession Act, s 50, no particular form of attestation is necessary · therefore, where, to a document purporting to be her last will and testament, the name of the testatrix was written by *A*, and the testatrix then in his presence affixed her mark, and *A* in her presence wrote beneath it "by the pen of *A*," and the testatrix was then identified to the Registrar, who was present, by *B*, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her, - *Held* a sufficient attestation, and probate was granted IN THE GOODS OF ROIMONEY DOSSEE . I. L. R., 1 Calc, 150

16. ———— *Succession Act (X of 1865), s 50, cl. 3—Initials of witness—Semble*—If the attesting witnesses affix their initials at the time of witnessing the execution of a will it is a sufficient compliance with the terms of s 50 of the Succession Act AMMAYEE *v*. YALUMALAI

[I. L R, 15 Mad, 261

17. ———— *Will not attested by two witnesses—Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s 2, cls (a) and (b).*—The Hindu Wills Act (XXI of 1870) applies s 50 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in s 2 cls (a) and (b), of the former Act A will which was not such a will as there mentioned was held to be valid, though not attested by two witnesses. IN RE BAPUJI *v*. JAGANNATH

[I. L. R, 20 Bom, 674

18. ———— *Pardanashin lady—"In the presence of"—Succession Act (X of 1865), s 50*—After execution of her will by a testatrix, a pardanashin lady, and its attestation in her presence by a witness who had seen her execute it, it was presented for registration, the testatrix

WILL—*continued.*

2 ATTESTATION—*continued.*

execution of the will, and her admission was endorsed on the will and witnessed by the Registrar, and the person who identified her, at the same time. *Held* that the witness was "in the presence of" the testatrix within the meaning of s 50 of the Succession Act (X of 1865). HORENDRANARAIN ACHARJI CHOWDHRY *v* CHANDRAKANTA LAHIRI

[I. L. R., 16 Calc, 19

19. ———— *Succession Act (X of 1865), s 50—Proof of due attestation of will—Strict proof of due attestation whether necessary.*—*S*, the widow of *J*, the testator, applied for probate of his will. The writer of the will deposed that he

acknowledged his signature to these witnesses, or that the will was otherwise properly attested by a second witness *Held* that strict affirmative proof of due attestation is not absolutely necessary in cases of this class; and if the circumstances are such as to warrant the Court in reasonably concluding from those circumstances that the will has been duly attested, probate may be granted That upon the whole evidence it could reasonably be concluded that the will had been duly attested in accordance with law. *Right* v *Sanderson, L. R., 9 P. D, 149*, referred. SIBO SUNDARI DEBI *v*. HEMANGINI DEBI

[4 C. W. N., 204

20. ———— *Grant of probate—Signature—1 Vict., c. 26 (Wills Act), s 9—Succession Act (X of 1865), s 50*—To the will of *A*, a British-born subject and a member of the Bengal Civil Service, who died in India possessed of personal property only, a native servant of the testa-

—A signature by mark would be a sufficient signature to a will by a witness under the Succession Act. IN THE GOODS OF WYNNE . 13 B. L. R., 392

21. ———— *Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s. 2*—S 50 of the Succession Act (X of 1865) clearly intends that the two attesting witnesses to a will shall sign their names after the testator or testatrix shall have executed the will. *Bissonath Dinda*

WILL—*continued.*

3. FORM OF WILL—*continued.*

30. ——— **Testamentary document**—*Will to have effect on contingency—Probate.*—*A*, being ill and away from home, wrote to his brother *B* certain directions as to the management of his property, and concluded: "Brother, if I die of this sickness and *C* survive me, then whatever property I have you will give one half to *C*," etc. In another and subsequent letter he wrote to *B* "I don't

" I appoint you turney (executor) in all matters relating to *C*," etc *A* recovered from the fever, but died suddenly a year later, without having made any other testamentary disposition of his property.

ness he was suffering from at the time of writing, and therefore probate which had been granted by the Court at the original hearing was ordered to be brought in and cancelled. KAMEENEE DOSSEE *v.* BISSONATH GHOSE . 2 Ind. Jur., N. S., 6

31. ——— *Imperfect form of will—Will unexecuted by testator—Blank spaces in body of will—Application for probate.*—A testator died leaving as his will a printed form of will

should be admitted to probate. *In the goods of Pasmore, L. R., 1 P. & D., 653,* referred to. IN THE GOODS OF PORTHOUSE
I. L. R., 24 Calc., 784

32. ——— *Document intended to take effect partly in the lifetime of the executant and partly after the executant's death—Probate and Administration Act (V of 1881), s. 3.*—There is

33. ——— **Codicil**—*Probate, Application for—Document referring to will.*—After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda in the testator's handwriting, made after the date of the will, and directing certain dispositions of his property One entry referred in express terms

WILL—*continued.*

3. FORM OF WILL—*concluded.*

and the petition was therefore dismissed. IN THE GOODS OF WEMYSS . I. L. R., 4 Calc., 721

4. NUNCUPATIVE WILL.

34. ——— **Validity of nuncupative will**—*Roman Catholics of Portuguese extraction—Intestate succession—Quære*—Whether a Roman

35 ——— *Nuncupative will of a Mahomedan—Probate and Administration Act (V of 1881), ss 3, 24, 25, 26, 62—Succession Act (X of 1865), s 244 and Ch. IX*—Probate may be granted of a nuncupative will IN THE MATTER OF THE WILL OF MAHOMED ABBA IN RE MARIAMBAI . I. L. R., 24 Bom., 8

5. VALIDITY OF WILL.

36 ——— **Military testamentary document**—*Application for probate—Lapse of time—Invalidity of will*—A military testament valid in its inception may be deprived of its privilege by lapse of time. IN RE GODBY . 1 Hyde, 196

37. ——— **Will of Cutchi Memon**—

SIDICK *v.* AHMED. ABDULA HAJI ABDSATAR *v.* AHMED . I. L. R., 10 Bom., 1

GREENWAY *v.* HOGG
Cor., 87: Bourke, A. O. C., 111

39. ——— **Question of due execution and validity of will**—*Disposition of immoveable property in British India.*—The validity of a will which purports to dispose of immoveable pro-

40. ——— **Will procured by importunity of wife**—*Succession Act, s 48—Undue influence.*—The wife of the testator persuaded him to execute a will in supersession of a former will less favourable to her, but the influence which she exerted

WILL—*continued.*

5. VALIDITY OF WILL—*concluded.*

was not such as to deprive the testator of the exercise of his judgment and volition. *Held* that the conduct of the wife did not amount to undue influence MORISON *v.* ADMINISTRATOR-GENERAL OF MADRAS [I. L. R., 7 Mad., 515

41. ——— Proof of genuineness of will —*Registration and attestation.*—When a document propounded as a will is proved to have been executed and registered by the alleged testator, it is still essential to enquire into the circumstances connected with its execution and registration, when the will is inofficious and there are other suspicious matters connected with it KISTO CHURN MOJOOMDAR *v.* DWARKA NATH BISWAS . . 10 W. R., 32

42 ——— Blank spaces left in body of will—*Alterations and erasures in will—Presump-* [illegible]

Court having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations, and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes,—*Held* [illegible]

VINAYAK KANE . . I. L. R., 16 Bom., 652

43 ——— Will in excess of power of Hindu widow.—A Hindu widow made a will disposing of property, of which under an award she had only the use during her life, and to which the [illegible] While [illegible] pray- [illegible] The [illegible] took [illegible] the testatrix died *Held* that the will should be declared to be invalid so far as it operated to defeat the award. MAGANLAL PURUSHOTTAM *v.* GOVINDLAL NAGINDAS . I. L. R., 15 Bom., 697

6 REVOCATION.

44. ——— Evidence as to revocation of a will—*Onus of proof of revocation of will.*—A will duly executed is not to be treated as revoked, either wholly or in part, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the will contained either words of revocation or dispositions so inconsistent with those of the earlier will that the two cannot stand together It is not enough to show that the will which is not forthcoming differed from the earlier one, if

WILL—*continued.*

6. REVOCATION—*concluded.*

it cannot be shown in what the difference consisted. It is also settled that the burden of proof lies upon him [illegible] proposition [illegible]

UMDA KH[illegible]

45. ——— Revocation of portion of will—*New page of will not duly executed substituted by testator after execution of will—Dependent relative revocation—Probate.*—After the death of the testator (H. G. Meakin), his will was found among his private papers in a sealed envelope with the words "H. G. Meakin's will, not to be opened until after death," written in his handwriting on the face of the envelope The will was wholly in his writing, and was written on four separate [illegible]

page stated the date of the will and was signed by the testator and was duly attested by the said two witnesses The actual execution of the will took place (as was proved by evidence) in March or April 1894 The second page, however, was of a different kind of paper from the other pages and of smaller size, and was signed by the testator, but not by witnesses This second page contained a bequest to a child who was born in May 1894, *i.e.*, some months after the will was executed. The executors propounded the will. *Held* that probate must be refused KER *v.* MEAKIN [I. L. R., 20 Bom., 370

7. INSPECTION OF WILL.

46. ——— Practice—*Application by next-of-kin of deceased.*—The Court, on the application of one who is next-of-kin of a deceased Hindu, ordered a person in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant. IN THE GOODS OF BALKRISHNA GANPATJI [1 Bom., 114

8. RENUNCIATION BY EXECUTOR.

47. ——— Procedure after renunciation—*Proof of execution of will in Court—Administration accounts.*—A Hindu testator empowered his executor to lay out such portion of his estate as the executor might think fit towards charitable purposes, and did not dispose of the residue [illegible] and no pro- [illegible]

WILL—*continued.*

9. CONSTRUCTION.

48. ——— Construction of will—*Powers to construe will without administration suit—Chancery practice*—A testator by his will devised certain house property, first for the celebration of pujahs and the worship of an idol, and then that his children with their families should be allowed to live there. One of the sons used the premises for the purpose of his business as a kaviraj, which was objected to by the other sons as being contrary to the terms of the will. One of the defendants also contended that, before the Court could construe the terms of the will to ascertain the meaning of the testator, it was necessary to bring a proper administration suit. *Held* that, considering the character of the consequential relief sought, the Court could construe the will without an administration suit. That questions between trustees and beneficiaries and between trustees and strangers requiring the construction of provisions in a trust deed have been determined without the Court being asked to undertake the entire administration of the trust. *In re Weall, L. R., 42 Ch. D. 674*, approved. BHUGOBUTTY PROSONNO SEN *v.* GOOROO PROSONNO SEN . I. L. R., 25 Calc., 112

49. ——— Rules of construction—*Intention of testator—Meaning of "purchase."*—The rule of construction applicable to a will is that

what possibly might have been the intention of the testator, but is not expressed or implied in the terms of the testament *G*, by a clause in his will, gave his wife a life-interest in the house in his possession, and in those which he might afterwards "purchase" In *G*'s lifetime his younger brother died, and *G* thereby acquired a house by inheritance. *Held*, there being nothing to show that *G* had used the word "purchase" in any other than its ordinary sense, that the language of the will could not be strained in order to give effect to what possibly might have been the testator's desire had he foreseen the death of his younger brother in his own lifetime, but was not expressed or implied in the terms of the testament, and that the house did not pass under the will to the testator's widow GEORGE *v* GEORGE

[6 N. W., 219

tained no express appointment of executors, but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, and imposed upon them the duty of providing for the maintenance of persons therein named *Held* that the plaintiffs were not appointed executors by implication. SESHAMMA *v.* CHENNAPPA . . . I. L. R., 20 Mad., 467

WILL—*continued.*

9. CONSTRUCTION—*con*

51. ——— Effect of wor from inheritance—*Heir-at-law*— habitant of Surat, died there on th ary 1879, leaving him surviving the lations, *viz.* A daughter *J* (the re his first wife, who had predeceased hin

married to *K* and whose son *E* was the By his will *A* expressly directed that ne daughter *J* nor his widow Dhanbai shou any share of his property, the whole of w bequeathed to his brother *R*, who, howeve deceased him *Held* that the use of mere n words, unaccompanied by any effective disposit his property, could not exclude his daughter *J* widow Dhanbai from succeeding to their shares o estate. ERASHA KAIKHUSRU *v* JERBAI

[I. L. R., 4 Bom.,

52. ——— Commission of manager estate how calculated—*Intention of testator.* Other questions disposed of in the Court of fir instance having remained undecided by the Hig Court, which dealt with the question of jurisdiction alone, were considered with reference to whether

53. ——— Armenian will—*Devise*—

absolute one *A* took an absolute estate under the devise. BROUGHTON *v* POGOSE

[12 B L. R., 74; 19 W. R., 181

54. ——— Superstitious uses, English law against—*Application of English law to India.*—*Semble*—The English rule of law which prohibits the bequest of money for superstitious uses has no application in India JUDAH *v.* JUDAH

[5 B L. R., 433

55 ——— Bequest for performance of masses—*Validity of bequest*—A bequest in a will of a sum of money for the performance of masses in Calcutta is valid ANDREWS *v* JOAKIM

[2 B L. R., O. C., 148

WILL—*continued.*

9 CONSTRUCTION—*continued.*

56. ——— *Validity of bequest—Gift to superstitious uses.*—A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious use. DAS MERCES *v.* CONES . . . . . . 2 Hyde, 65

57. ——— Bequest for masses held void as infringing the rule against perpetuities. COLGAN *v.* ADMINISTRATOR-GENERAL OF MADRAS . . I. L. R., 15 Mad., 424

58. ——— Legacy to attesting witness—*Succession Act, s 51.*—A legacy to the attesting [illegible] Succession witness is ADMINIS-

[I. L. R., 4 Mad., 244

59. ——— Legacy to minor—*Absolute gift—Discretion of executor.*—Where there is an absolute bequest and power to executor to delay making over the legacy at discretion,—*Held* that, on attaining majority, the legatee should at once be put in possession. DE SILVA *v.* DE SILVA

[1 Ind. Jur., N. S., 16: Bourke, O. C., 281

60. ——— Legacy whether to be paid out of particular fund or out of general assets—*Demonstrative legacy*—Payment of legacies, or gifts of stipends, having been refused by the representatives of the testatrix, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment,—*Held*, on a consideration of the whole will, that the words of the gift were wide enough to charge them upon the whole of her moveable estate; also that, if the words of the will were to be taken in a more restricted sense, the gift of the stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the general estate, on failure of the particular fund pointed out. MIRZA *v.* UMDA KHANAM. MIRZA *v.* GUNNA KHANAM . I. L. R., 19 Calc., 444

[L. R., 19 I. A., 83

61. ——— Devise of one kani out of an estate—*Right of selection by the devisee.*—The owner of land, measuring one kani and three-quarters, died, leaving a will by which he devised one kani thereof to the plaintiff who now sued to recover one kani selected by him out of the land in question. *Held* that plaintiff had the right to make his selection and was entitled to a decree. NARAYANASAMI GRAMANI *v.* PERIATHAMBI GRAMANI

[I. L. R., 18 Mad., 460

62. ——— Domestic servant—*Legacy, Suit for—Sirang.*—The testator, a Hindu made a [illegible] been in the service of the testator for about forty years as sirang on board a steamer which the testator kept on the river [illegible] the afternoon, returning to take his meals and stay on board the steamer. *Held* that he was entitled to take under the legacy as a domestic servant of the testator DHANNO SIRANG *v.* UPENDRA MOHUN TAGORE . . . . . 8 B. L. R., 244

63. ——— *Washerman.*—*Held* on the evidence that the plaintiff had failed to prove he was a domestic servant of the testator, so as to entitle him to take a legacy under this clause. BHIM DAS *v.* UPENDRA MOHAN TAGORE

[9 B. L. R., Ap. 4

64. ——— Husband and wife—*Trustee—Sole use and benefit.*—A testator made the following bequest in his will: "I give, devise, and bequeath to my dearly-beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and [illegible] and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testator's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, etc., of the business during their marriage. *Held* (reversing the decision of the Court below) that, on the true construction of the will, the stock-in-trade, etc., was not bequeathed to the wife for her sole and separate use independent of any future husband; her husband did not become a trustee for her in respect of such stock-in-trade or the profits of the business, and he was not bound to render an account. ORD *v.* ORD

[4 B. L. R., O. C., 83

65. ——— Dedication to religious purposes—*Rule against perpetuities.*—If there is a valid dedication of premises for religious purposes, this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities. BHUGGOBUTTY PROSONNO SEN *v.* GOOROO PROSONNO SEN . . . . . I. L. R., 25 Calc., 112

66. ——— Charitable bequest—*Bequest for spiritual benefit—Uncertainty—Superstitious uses.*—*N E J*, a Hebrew merchant domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after ap- [illegible]

WILL—*continued.*

9. CONSTRUCTION—*continued.*

what may remain after payment of the above-mentioned sums, as well as the debts, shall remain under the control of my brothers, *S E J* and *J E J*, for the purpose of defraying therewith the expenses for the year, and making charitable distributions as

67. ———— 43 *Eliz., c. 4—Mortmain, Statutes of—Hospital—Clause prohibiting alienation*.—A testator left his personal property to trustees in trust to pay thereout certain annuities to his son and daughter, and, after bequeathing some pecuniary legacies, devised certain immoveable property to the trustees in perpetuity

Court would give effect, as being a charitable trust within the scope of 43 Eliz, c 4 The statutes of Mortmain not applying to India, the Court

as being repugnant to the devise, and, notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate, the property for the purpose of maintaining the hospitals. BROUGHTON *v.* MERCER [14 B. L. R., 442

68. ———— *Void bequests—Uncertainty—"Surplus"—General residuary bequest.*—A testator by his will directed as follows: "I do hereby direct my trustee to feed the really needy and poor at Goveenathjee out of a separate expense out of my estate, to be contributed to the worship of Lukeejonardunjee, my ancestral goddess. I do direct my trustee to spend suitable sums for the annual sradhs or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the

during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class, and of the poor Brahmins, and other respectable castes, as my trustee will think fit to comply" *Held* that the gifts were valid testamentary bequests and that the words "should there be any surplus after the above expenditure" created a general residuary bequest *Held*, on appeal

Pundits holding tolls, and for the reading of the Mohabharat and Pooran and for prayer to God, were valid. DWARKANATH BYSACK *v* BURRODA PERSAUD BYSACK . . . I. L. R., 4 Calc., 443

69. ———— *Cy près, Doctrine of.*—A testatrix bequeathed the interest of a Government promissory note to "The Calcutta Armenian Orphans' College Funds for the Relief and Enjoyment of the Poor Families, Widows, Orphans, and Schools of the Armenian Nation," to be received

Church of St Nazareth, distributed money amongst, and gave relief to the poor families, widows, and orphans of the Armenian community, and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community. The note was invested by order of the Court,

v. SATOOR . . . . . 1 Mad.,

WILL—*continued.*

9. CONSTRUCTION—*continued.*

70. ——— Failure of object—*Cy près performance—Construction of will.*—The doctrine

fails and cannot lapse. It cannot be laid down as a

an amount to satisfy it, that it would be absurd to

go to the residue In applying the *cy près* doctrine, regard may be had to the other objects of the testa-

may guide the Court in framing a cy près scheme to benefit that locality Unless the *cy pres* scheme

g, a Court

MAYOR OF

W. R., 1

L. R., 3 I. A., 32

71. ——— Charitable gift—*Cy près doctrine—Lapse—Construction of will.*—A testator directed his executor to set apart a sum of R7,000 to provide a fund for or towards the education of two or m

boys to b

parents,

Christian

1864 the St. Paul's School, Calcutta, was removed to Darjeeling. In the St Paul's School, Calcutta, the fees for day scholars and day boarders were R8 and R10 respectively. In the St. Paul's School, Darjeeling, there were no day scholars nor any day boarders; and the cost of a regular boarder would be about R120 per annum. *Held* that the gift did not lapse, being a general charitable bequest, and that under the circumstances it must be executed *cy près* MALCHUS *v.* BROUGHTON

[I. L. R., 11 Calc., 591

72. ——— *Gift—Cy près, Doctrine of—Lapse of legacy—Costs.*—Under the will of *A*, who appointed the Administrator-General of Bengal his executor, *B* had a life-interest in the residue of the testator's estate. *B* brought a suit against the Administrator-General to have it declared that a pecuniary legacy, given under the will, had lapsed and fallen into the residue. Prior to the

WILL—*continued.*

9. CONSTRUCTION—*continued.*

BROUGHTON . I. L. R., 13 Calc., 193

73. ——— *Appointment of trustee—Failure to carry out wishes of testator.*—Where a testator had made a bequest for charitable purposes and had made no express provision for the management of the charitable trust so created, except by directing that, in the event of his heirs failing to carry out his wishes in respect of the trust fund, the Civil Court should take the fund and the management of the trust summarily into its own hands,—*Held* that, in the absence of misconduct, the widow, and not the Collector, was the proper person to be appointed trustee. HORI DASI DABI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 5 Calc., 228 : 4 C. L. R., 77

74. ——— *Bequest to charity —Public charity—Trusts affecting land—Perpetuity—Parsi religious ceremonies: baj rasgir, nirangdin, yezashni, ghambar, and dosla—Civil Procedure Code (Act XIV of 1882), s. 627.*—A Parsi by his will directed that the income arising from a one-third share of a bungalow in Bombay,

the trusts of the will were void, and that the direction that the property should not be sold was invalid. LIMJI NOWROJI BANAJI *v.* BAPUJI RUTTONJI LIMBUWALA . I. L. R., 11 Bom., 441

125.—A testator left a legacy to his wife in the following terms: "R2,000 to be credited in our shop in the name of my wife Bai Bapl. Interest at 6 per cent. to be paid to her every year. If in her lifetime she demands the money to use in a good work

WILL—*continued.*

9. CONSTRUCTION—*continued.*

void for uncertainty, she was entitled to the money as if the will had contained no such direction BAI BAPI *v.* JAMNADAS HATHISANG

[I. L. R., 22 Bom., 774

76 ———— Children—*Domicile—Rules* ... *from* ... omicile, the law appli- iples of

natural justice. In such cases, in applying the rules of Hindu, Mahomedan, or English law to the wills of Hindus, Mahomedans, or East Indian Christians respectively, their particular habits and modes of life may be looked to as a guide to the interpretation. From the context of the will and surrounding circumstances, "children" may be interpreted as illegitimate children. Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants-for-life, was applied to the purchase of other estates, —*Held* those estates did not pass to the remaindermen, but formed the absolute property of the tenants-for-life, and passed to their devisees. BARLOW *v.* ORDE . 5 B. L. R., 1: 13 W. R., P. C., 41

[13 Moore's I. A., 277

77. ———— Contingent gift—*Puttro poutradi, Meaning of—Absolute estate.*—A Hindu, *B L M*, died in 1874, leaving a widow, *K K D*, a

ing a son, grandson, or son's grandson, his widow, *K K D*, should take the whole of his estate according to the shastras, and enjoy the profits thereof for her life, and that on her death, in the event of a daughter or daughters having been born to him, then she or they, and on the death of her or them, then her or their son or sons (the testator's daughter's sons) should in like manner take and become the

whole estate absolutely from generation to generation

that *H D D*, if she survived the testator's widow *K K D*, and was not then a barren or childless widow or otherwise disqualified, would take, not a life-interest but an absolute estate, to the exclusion of *R L M*. *Held* also that the words "puttro poutradi" had generally the effect of defining the estate given as an estate of inheritance, and did not by themselves necessarily denote that the estate given was to be one descendible to heirs male only. *Held* also that in case of *H D D* not surviving *K K D*, or of her being at the time of the death of *K K D* for any reason disqualified from taking the estate, then upon the death of *K K D* the gift to the Government of the reversion to the exclusion of *R L M* would take effect, and was a good and valid gift. HORI DASI DABI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 5 Calc., 228: 4 C. L. R., 77

78. ———————— *Gift to children on their attaining 21.*—Where words of contingency form part of the description of the class of persons to take, as in the case of a gift to those "who shall attain the age of 21," the words must receive their natural construction, and no estate vests in any one

a Court in adopting any but the literal construction. In the case of words of contingency occurring in the description of the class of persons to take a mere gift over is not sufficient to change their meaning. BALLIN *v.* BALLIN

[I. L. R., 7 Calc., 218: 8 C. L. R., 28

79 ———————— *Period of distribution—Survivorship.*—*A*, a Hindu, made the

survivor of them will receive this estate in equal

the estate became divisible on the infant son of *D* attaining majority ELLOKASSEE DOSSEE *v.* DURPONARAIN BYSACK . I. L. R., 5 Calc., 59

80 ———————— *Vesting of estate in executor—Directions to executors, Effect of* A

WILL—*continued.*

9. CONSTRUCTION—*continued.*

their protection;" that they should pay out of her estate the charges of interment, etc., that they should repair four houses annually out of the income thereof, having let them out to hire, and after paying taxes and ground rent divide the proceeds every three months between the testatrix's two sons; that the executors should not give the rents to the creditor, because the bequest of the income to the sons was "not an entire gift to them, but a mere provision for their support." The will proceeded as follows "Should my son *M* happen to die before the decease of his wife, then I give the share of *M* to his widow *H M*, etc., and after the death of *H M*,

[illegible]

21 years, and then the amount of their share

[illegible]

male children, then I give and bequeath the shares of my son *M* to my son *J* as a provision for his support, etc. If my sons *M* and *J* die without having male issue, and if their wives, that is to say, *H M* and *C J*, die without having male issue be-

[illegible]

estate in fee. Thirdly, that the children of *G* took equitable estates in remainder in fee, defeasible in case of their death in the lifetime of the first taker for life, in which event there was substituted a devise to their children in fee. Fourthly, that the children of *G* took as tenants-in common, and not as joint tenants, and therefore that, as there was nothing from which cross remainders between the children of *G* could be implied, the share of *A* reverted to the heir at-law of the testatrix. Fifthly, that wherever any estate in fee is devised to a trustee in trust without any limitation of the estate of the *cestui que trust*, the latter takes the beneficial estate in fee SHIRCORE *v.* ADMINISTRATOR-GENERAL . . . . 1 Ind. Jur., O. S., 50

81. ———————— *Gift to children.* —A testator, after providing for payment of debt

WILL—*continued.*

9 CONSTRUCTION—*continued.*

etc, directed that the whole of his property should be disposed of and the proceeds placed in the On-

[illegible]

children attaining their age of majority, I request that my executors pay to each of them severally and proportionably the full amount of interest accruing from my estate (the existing provision for my two daughters to continue during their natural life), and after their demise the said interst in like manner to revert to their heir or heirs in succession." *Held*,

[illegible]

E S and *M D* were severally entitled during the lifetime and minority of their children to a monthly stipend of R10 in respect of each child, such payment to cease upon the death of each child or on its attaining majority, till which latter event the said children took no interest under the will. Thirdly, each child upon attaining its majority took a share of the residue, proportioned to the number of children then living, and a contingent proportionate interest in the shares of each of the other children which would become vested on the death of each one dying under twenty. Fourthly, the limitation of the gift "during their natural life and after their demise, the said interest in like manner to revert to their heir or heirs in succession," did not prevent the children from taking their several shares absolutely under the will. *Semble*—The rule in *Wild's case, 6 Rep., 17,* is not applicable to personalty. AGNEW *v.* MATHEWS [1 Ind. Jur., O. S, 74: 1 Mad, 17

82 ———————— *Gift over—No mention of time for the occurrence of specified uncertain event—Succession Act (X of 1865), s 111, ills. (d) and (e), Application of—* A testator by his will bequeathed to one *K* a legacy with the proviso that if "after the expiration of nine years from my death . . . *K* should die without son or grandson, then *M* shall get his (*K*'s) properties." The uncertain event, namely, the death of *K* without son or grandson, did not happen before the expiry of nine years from the testator's death, that is, before the period of distribution. *Held* that where a will fixes the nearer limit of time beyond which the specified uncertain event is to happen, but does not fix either any definite point of time at which or any further limit of time within which that event is to happen, it does not amount to the mentioning of a time for the occurrence of that specified uncertain event. That s. 111 of the Succession Act lays down a hard-and-fast rule regulating the

WILL—*continued.*

9. CONSTRUCTION—*continued.*

validity of certain classes of contingent bequests, which must be applied wherever applicable without

Edwards v. *Edwards*, 15 *Beav.*, 357; *Tagore* v.

by s. 111. MONOHUR MUKERJEE v. KASISWAR MUKERJEE. MOHENDRO NATH MUKERJEE v. KASISWAR MUKERJEE . . 3 C. W. N., 478

83. ——— *Gift over on failure of prior devise.*—A testator made the following disposition by his will: "I appoint my brother *N* sole executor of my estate and effects after my decease, who shall pay all my debts and collect

her marriage or maintenance till that period should be defrayed from my estate. I also wish that she should receive a legacy of a Government 4 per cent. promissory note for R2,000 on her attaining proper age *In case my son dies before attaining proper age, all my estate and property should be taken*

with which the widow was *enceinte* turned out to be a daughter. *Held* that the clause in italics was one purporting to give the property, and not only the management of it, to *N*, the power of management having already been given him in appointing him executor; that the provisions for maintenance of the widow, and for the marriage expenses of the

NILMONEY MULLICK . I. L. R., 15 Calc., 282

84. ——— *Vesting—Period of distribution—Gift of dividends*—*S*, a Portuguese inhabitant of Bombay, by his will dated 19th

WILL—*continued.*

9. CONSTRUCTION—*continued.*

towards the maintenance and education of my children until each of my sons attains the age of twenty-one years, when his or their share shall be paid unto him or them; (2) I desire further that whatever may be remaining, of the moneys collected by my executors, after all my sons shall have attained the age of twenty-one years, and after my daughters shall have been married, shall be distributed, after deducting R2,000 as dowry given to two daughters, in equal parts between my sons and

distribution, did not divest the shares so vested.

in the estate. DE SOUZA v. VAZ [I. L. R., 12 Bom., 137

85. ——— *Vesting—Post-*

R500 every year, for the maintenance of each

the property vested in *J* on the testator's death, but only for a life estate. *Held* also (reversing the decision of JARDINE, J.) that the directions for

GOSAVI SHIVGAR DAYAGAR v. RIVETT-CARNAC [I. L. R., 13 Bom., 463

86. ——— *Perpetuities, Rule against—Superstitious uses—Trust for masses—Executor, Assent of—Vesting of bequest*—An Armenian died in Madras in 1835, leaving a will

WILL—*continued.*

9. CONSTRUCTION—*continued.*

whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed [illegible]

[illegible]

and given to her husband, and the remaining R28,000 should be added to the first-mentioned [illegible]

[illegible]

settled as provided in the will except as to the R14,000, as to which it was declared that in the event of there being no issue of the marriage, and of the wife surviving the husband and dying without marrying again, it should be divided between the residuary legatees of the testatrix. The husband was a party to the settlement, as also was the executor of the testatrix who was one of the trustees of the settlement. The marriage having taken place, a suit was brought by the husband and wife against the trustees, and a decree was passed under which the trustees were relieved of their office, and the trust funds paid into Court with the direction that [illegible]

[illegible]

out letters of administration to administer the estate left unadministered of the testatrix, and the R42,000 above-referred to were paid over to him. *Held* by SHEPHARD, J., that the sum of R14,000 by reason of the settlement, but not otherwise, fell into the residue of the estate of the testatrix. *Held* by COLLINS, C.J., and HANDLEY, J., affirming SHEPHARD, J., (1) that the sum of R28,000 formed unadministered assets of the estate of the testatrix; (2) that the bequest for masses was void as infringing the rule against perpetuities. COLGAN *v.* ADMINISTRATOR-GENERAL OF MADRAS

I. L. R., 15 Mad., 424

87. ———— *Succession Act (X of 1865), ss. 68, 105, 159—Trust fund to be called after testator's name—Perpetuities, Rule against—Creation of fund, and dispositions except directions for making it a perpetuity, held valid—'Personæ designatæ,' Bequest to persons as—Vesting of legacy, Time of—Income of fund, Gift of—Tenancy-in-common—Joint tenancy—Advancement out of minor legatee's share for his benefit, Power of—Vested interest, liable to be divested by condition subsequent—Precatory trust, Expression of wish held not to create—Patent deficiency as to objects of bequest—Failure of legacy—Charitable uses, void bequest to.*—Where by his will a testator directed the establishment in the Bank of Madras by the executor and trustee of the will, of a fund to be called after the testator's name, the "Garratt Trust Fund," and directed "that such trust fund shall never be removed from deposit in the said Bank of Madras at Madras so long as that Bank shall exist," and "that 'The Garratt Trust Fund' shall be a continuing fund to all time," and that the interest therefrom should be enjoyed by certain legatees and "the same shall be inherited by any child or children of them hereafter from time to time and from one generation to another in accordance with all legal rights,"—*Held* that there was nothing illegal about the creation of this fund, except the direction that the securities representing it should never be received from deposit in the Bank of Madras, which, as an attempt to create a fund in perpetuity, was invalid, but that this did not prevent the intention of the testator to create and endow the fund from being carried out, and that the legatees took an absolute interest. The testator bequeathed "to my grandchildren by my said late daughter *E W*, also to my grandson *F W M* and to his step-brother *G W M*" in equal shares a certain fund. *Held* that this was a bequest to the testator's grandchildren by his late daughter *E W* not as a class, but to them individually as *personæ designatæ*. *Held* also that, under the terms of the will, the testator's said grandchildren by the late *E W* and *F W M* and *G W M* took vested interests in their respective shares in the said fund from the death of the testator; that the gift to them of "the benefit interest and profit" of the fund was a gift of the corpus of the fund by virtue of s. 15[?] of the Indian Succession Act; that they took as tenants-in-common, not as joint tenants; and that under a power given to the executor to make disbursements from the said fund for certain purposes for the benefit of *F W M* in connection with his going to and returning from England the executor was not authorized to apply, towards those purposes, more than *F W M's* one-ninth share in the said fund, as it was not the intention of the testator to give *F W M* a benefit out of that fund over and above that share, and that the executor, in making disbursements for the purposes specified, was only empowered to trench upon the principal of that [illegible]

[illegible] mainten- [illegible] eld also [illegible] ird and [illegible] use and

premises to *F W M*, the devisee took on the testator's death a vested interest in that property, liable to be divested in the event of his dying under the age of twenty-one years. *Held* also that under the terms of the devise in the fifth and sixth clauses of the will of a certain house and premises and furniture to the children of the testator's late daughter *E W* (who was dead at the date of the will), there was an absolute gift to the children of *E W* of the testator's whole interest in that property, and that such gift was not controlled by the directions in the latter part of the fifth clause that the house should not be sold until the youngest grandchild attained the age of eighteen years, which must be regarded

WILL—*continued.*

9. CONSTRUCTION—*continued.*

merely as an expression of the wish of the testator and not as a *precatory trust*, and was of no legal effect; and that the children of *E W* who were living at the testator's death did not take as joint tenants, but took as *personæ designatæ*, each an equal share in the property, which vested in them on the death of the testator, and therefore the share of one of them, *E G W*, who had survived the testator, but died subsequently, having vested in *E G W*, passed to *E G W*'s representative, the ninth defendant. In the sixteenth clause of the will the testator directed his executor and trustee out of a certain sum of R500 to "disburse various petty pensions to some poor people who have been mentioned to him" (the executor and trustee) "by me." *Held* that there was a deficiency on the face of the will as to the objects of this bequest, and by s 68 of the Indian Succession Act no extrinsic evidence

to the support of the testator's Temperance and Reading Rooms for European pensioners and the Poor Widows' Quarters attached thereto, being a bequest to charitable uses, was void under s 105 of the Indian Succession Act, as the testator had nearer relatives than nephews, and the will was executed less than twelve months before his death ADMINISTRATOR-GENERAL OF MADRAS *v.* MONEY [I. L. R., 15 Mad., 448

88. ——————— *Joint tenancy-in-fee—Life estate—Intention of testator—Restricted enjoyment, Direction as to*—A testator devised his estate should his wife remain his widow, for the general

and a

wife

that,

have a full life-interest in the estate, and should not be annoyed with any vexation about shares during her lifetime, but that after her death her children and their descendants should take *per stirpes*; and

in the event of his said wife contracting a second marriage, and his children dying before marriage, and without children and under age, his wife should take half of his estate and the testator's brother the other half, and in the event of the brother dying without children, the testator's wife should take the whole estate The testator's wife remained his widow

tended to restrict the mode in which they were to enjoy the gift HALIBURTON *v.* ADMINISTRATOR-GENERAL OF BENGAL . I. L. R., 21 Calc., 488

WILL—*continued.*

9. CONSTRUCTION—*continued.*

89. ——————— *Duress—Forfeiture—Condition of residence.*—A testator by his will directed that if any of the female members of his family, either from misunderstanding or from any other cause, should live in any other than a holy place for more than three months, except for the cause of pilgrimage, they should forfeit their rights under the will. The plaintiff, a widowed daughter-in-law of the testator, and a minor, was removed

707, referred to TIN COURI DASSEE *v.* KRISHNA BHABINI . . . I. L. R., 20 Calc., 15

90. ——— ——— *Vested interest —Conditions repugnant—Condition restricting im-*

allowed to enjoy it until the end of the year 1900, and appointed two trustees to carry out his wishes.—*Held* that the son took an immediate vested interest

be calculated on the income of the estate, and not on the corpus LLOYD *v.* WEBB [I. L. R., 24 Calc., 44

session of all my property and enjoy the benefit of all moneys that may accrue until her death, when I wish that whatever may remain shall be used for the education of the children of the Eurasian and Anglo-Indian community. I desire that this will be administered by the Official Trustee of Madras." *Held* (1) that the reputed wife should take under

92. ——— ——— ——— *Restriction on legatees—Enjoyment—Residuary estate.*—Where a testator leaves a legacy absolutely as regards his estate, but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee, and where such objects fail, the absolute gift prevails, and does not fall into the residue of the testator's estate. Therefore, where a testator

WILL—*continued.*

9 CONSTRUCTION—*continued.*

[illegible] and- [illegible] ega- [illegible] es to [illegible] the [illegible] ards [illegible] ain- [illegible]

vided as to the legacy left to one grandson that upon [illegible]

93. —— — — Proviso for cesser—*Condition—Conditional limitation—Breach of condi-* [illegible] ving an [illegible] his will [illegible] that he [illegible] his son *G M T*, and that *G M T* was to take nothing under the will, he gave all his property to trustees, upon trust, as to the personal estate, "to collect and get in the same" with certain specified exceptions, and thereout to pay his funeral expenses and debts, "and such legacies as were not by the will postponed in payment," and to invest the residue, and out of the annual proceeds of such investments, so far as the same would extend, to pay certain annuities and postponed legacies as they became due, and to pay such surplus income as might from time to time exist to the person entitled to the beneficial enjoyment of the real property or the surplus rents or profits thereof, with an ultimate trust, after all the legacies and annuities had been satisfied, for the person or persons entitled to the beneficial enjoyment of the real property. And as to the realty, upon trust, until all the debt and legacies had been paid, and all the annuities had fallen in, to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities, and to pay the surplus rents to the person or persons for the time being to whom the real estate (subject to the devise to the trustees) was given by the will. And as a first charge on the net income of the real property (after satisfying the expenses of establishments), the testator [illegible]

fied, to convey the real estate, so far as the then condition of circumstances would permit, unto and

WILL—*continued.*

9. CONSTRUCTION—*continued.*

to the use of the person entitled, under the limitations contained in the will, to the beneficial interest therein. The first limitation was to *J M T* for life. At the end of the limitations of the real estate, the will contained the following proviso: "Provided always, and I hereby declare, if any devisee, or tenant-for-life . . . . shall permit or suffer the said property so devised and limited as aforesaid, or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said [illegible]

clared shall wholly cease and determine as to him, and the person next in succession to him under the limitations aforesaid shall at once succeed," as if the person committing a breach of such conditions had then died. The testator died in August 1868. In December 1868 his son *G M T* instituted a suit for the purpose of avoiding and setting aside the trusts and limitations of the will, except so far as they were for payment of debts, legacies, and an- [illegible]

under the limitations in the will, appealed to the Privy Council; and *G M T* filed a cross-appeal, in which he claimed that the gift of the life-estate to *J M T* ought to be declared void. By the order of Her Majesty in Council, which was dated the 9th August 1872 and which arrived in Calcutta in September 1872, all the limitations after the limitation to *J M T* were declared void and inoperative, and it was further declared that *J M T* was [illegible] interest in the realty, [illegible]

the realty, and also to the surplus rents of the same and the surplus interest of the personalty; and that, upon the failure or determination of *J M T*'s life-interest, *G M T* was entitled as heir at law to the real and personal property. The proviso for cessor was not among the provisions of the will which were declared void. *J M T* was one of the trustees under the will. After the testator's death, the business of the estate continued, as theretofore, to be carr[illegible] and *J* [illegible] own, u[illegible] balthak [illegible]

WILL—*continued.*

9. CONSTRUCTION—*continued.*

In November 1869 *J M T* quarrelled with his co-trustees, and ceased to go to the baithakhana. In April 1870 he demanded from the other trustees that possession of the beithakhana should be given to him, and upon their insisting on the right to occupy the portion of the baithakhana used for the purpose of the estate business, sued them for possession. In July 1870 a decree for possession was made in his favour. The trustees appealed, and ultimately, in July 1871, the Appellate Court made a declaration that it was consistent with the trusts of the will that *J M T* should enter into possession, and the trustees were ordered to deliver to him possession of the baithakhana, except the portion of the ground-floor occupied for the business of the estate. After obtaining his decree, *J M T* found that the baithakhana was in a very bad state of repair, and called upon the trustees to have proper repairs executed. On their refusal to do so, except under direction of the Court, *J M T*, in December 1871, brought a suit to compel them to effect necessary repairs; the trustees contested the suit, but in March 1872 a decree was passed directing them to make the repairs. Subsequently repairs were begun, which were completed in October 1872. In a suit by *G M T* alleging that *J M T* had committed a breach of one or more of the condi-

vantage,—*Held* that the clause containing the provisions for cesser and shifting of the estate was intended to come into operation as a whole and not piecemeal, and therefore that, until *J M T* came into full beneficial enjoyment of the life-estate given him by the will, or at all events until he became entitled to the surplus rents, the time had not arrived when that clause was intended to apply.
Held
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portion of the baithakhana house, and refusing to

Held that the clause could not be construed so as virtually to defeat it, and therefore it must be held to be operative before the trusts of the will were at an end, and *J M T*'s estate perfected by a conveyance. But held on the evidence that there had been no breach of the condition contained in the clause. The delay in not residing before October 1872 was not unreasonable. Where, in a condition of residence, no manner or period of residence is prescribed, but residence simply, and without definition, exclusive residence is not supposed to be meant;

JUTTENDRO MOHUN TAGORE
[14 B. L. R., 60: 22 W. R., 377
L. R., 1 I. A., 387

94. ——— Power of appointment—*Execution of power—Marriage settlement.*—A tes-

First, to my dear son *A* two shares, to my two dear daughters, *B* and *C*, each one share; the interest to be paid to them quarterly or half-yearly as may be most convenient. Second, I request that these shares shall not be transferable during their lifetime. Third, at the demise of any of my children without

lowing joint will we do hereby constitute the survivor of us to be executor or executrix in our estate and sole heir of the same, together with

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95. ——— *Gift of income for life with power to appoint—Invalid power of appointment—Gift over in default of appointment—Gift of residue equally between two sons and then to next-of-kin.*—A Parsi by his will devised a certain house to his executors on trust after payment of repairs, etc., out of the income thereof to pay the

WILL—*continued.*

9. CONSTRUCTION—*continued.*

balance of such income to his daughters, *C* and *J*, in equal moieties, and after their death "to the use of such of the issue only of the said *C* and *J* as they should respectively appoint, such appointment to affect their own respective moiety only ... default ... divide ... ld that ... ion for her life with power to appoint it among her children as she thought fit. Even if the power to appoint had been invalid, the gift over on default should be upheld, on the authority of *Peacock* v. *Frigout*, *L. R. (1893), 1 Ch., 54.* A Parsi testator by his will bequeathed the residue of his moveable property to his executors in trust out of the income thereof to apply the sum of R50 for the maintenance of his son *R* until he should attain 21 years of age and to invest the surplus of such income in Government securities, which should be added to the original corpus of his moveable property for the benefit of his said son *R*, and upon his attaining the age of 21 to pay over to him "the whole of the interest, dividends, and produce only of the corpus of the whole of the moveable property," and after the death of *R* in trust to divide the said corpus of the moveable property with all its additions and accumulations among the next-of-kin of the said *R*. By a codicil ...

respective lives, and that on their death one moiety of the corpus was to go to their next-of-kin. The Court, however, declined to make a declaration to that effect, as *R*, who at the date of suit was unmarried, might afterwards marry and have children, who would not be bound by a declaration made in this suit BYRAMJI JEHANGIR LAMNA *v.* RATNAGAR JAMSETJI RATNAGAR . I. L. R., 18 Bom., 1

96. ——————— *Bequest of power of management to widow and daughter for life—Estate—Gift to two persons as joint tenants or tenants-in-common.*—*N W*, a Parsi, died in 1843, leaving a widow *A* and a daughter *M* and two grandsons (sons of *M*) him surviving By his will (written in the Gujarati language) he directed that during her life his widow and daughter were "to agree together and to manage the affairs with unanimity," and after *A*'s death he gave the whole power over his estate to his daughter *M* "and so long as *M* enjoys her natural life, everything is to remain with her" The will then continued: "After the death of *M*—*M* has two sons, namely, Bhai Navroji and Bhai Nusserwanji—these two boys are the owners of whatever property and estate there may be belonging to me. They are considered as my children No one is to offer them any hindrance or impediment I have presented all to my wife and to my daughter, *M*." *Held* (confirming

WILL—*continued.*

9. CONSTRUCTION—*continued.*

FULTON, *J*) that *A* and *M* took only a life interest in the estate. (2) (Varying the decree of FULTON, *J.*) that *M*'s two sons took the estate as joint tenants subject to the life-interests of *A* and *M*, and not as tenants-in-common. NAVROJI MANOCKJI WADIA *v.* PEROZBAI . . I. L. R., 23 Bom., 80

97. ——————— **Gift in remainder expectant on termination of estate for life**—*Devise of talukh—The Oudh Estates Act, I of 1869—Registration—Acceleration of remainder on failure of life-estate*—A gift in remainder expectant on the termination of an estate for life does not fail, but is accelerated by reason of gift of such prior life-estate not taking effect. The principle of the decision in *Lainson* v. *Lainson*, *5 De Gex, M. & G.*, *754 18 Beav*, *1*, held applicable to a will made by a Hindu testator. A talukhdar, whose talukh was ...

will contained in s. 13 of the same Act. AJUDHIA BAKSH *v.* RAKMAN KUAR

[I. L. R., 10 Calc., 482 : L. R., 11 I. A., 1

98. ——————— **Vesting of interest**—*Divesting—Executory trust*—*H*, by his will, bequeathed to his daughter *A M H*, "on her attaining her 18th year, the sum of Company's R10,000, with any interest that may have accrued thereon, if she marries, to be settled upon herself and children sole ... money to be equ ... of ... the ... her 18th year) had a vested interest in the legacy subject to be divested upon her dying at any time unmarried, and further, subject to an executory trust in favour of her children in the event of her marrying at any time, and therefore that she was not entitled to have the capital of the legacy paid to her IN THE MATTER OF THE WILL OF HUNTER. IN THE MATTER OF ACT XXVIII OF 1866

[I. L. R., 4 Calc., 420

99. ——————— *Interest not sub-* ... *A R etc.,* ...

WILL—*continued*

9 CONSTRUCTION—*continued.*

possession of his or her share when they shall respectively attain the age of 25 years, and whenever either of my daughters shall enter into the holy state of matrimony. I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, or lineal descendants, or her share shall be divided equally amongst our other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of their mother. *Held* (reversing the decision of PHEAR, J.) that after the mother's death, each child took a vested interest on attaining the age of 25 years,—that is, at the time when possession is to be given,—and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue TAYLOR v PHILLOTT. PHILLOTT v. MORRIS . 1 Ind. Jur., N. S., 375

100. — — — *Divesting clause —Gift over on legatee's death "prior to division" of the estate—Gift not void for uncertainty—Act X of 1865 (Succession Act), ss 75, 91, 106.*—A testator directed his trustees and executors to hold his real and personal estate upon trust, to sell the real estate either together or in parcels, and either by public auction or private contract, and to call in, sell, and convert into money such part of his personal estate as should not consist of money, and to divide the said moneys, and the ready money which might belong to such estate, amongst the several persons named in the schedule to the will, and to pay the same to them in the shares and proportions therein mentioned, as and when they should respectively attain the age of 21 years in the case of males, or, in the case of females, when they should respectively attain that age or marry. He directed that, in the event of any of such persons dying in his lifetime, or at any time thereafter "prior to the said division," leaving lawful issue, such issue should be entitled to the share which their deceased parent would have taken. One of the legatees who had attained the age of 21 years at the testator's death died five months after him, before payment of the legacy, and left lawful issue. *Held* that the legacy vested in interest in the legatee at the testator's death, but that the legatee having died prior to the division of the estate, it became divested; that the "division" of the testator's estate meant, in this will, the ascertainment of the amounts allottable to the share of each legatee, after the conversion of the estate into money, and that the gift over in favour of the legatee's issue was not void for uncertainty, but took effect *Johnson* v. *Crook, L. R., 12 Ch. D., 639*, *Colisson* v *Barber, L. R., 12 Ch. D., 834*, *Bubb* v. *Padwick, L. R., 13 Ch. D., 517*, *Charlton* v *Seogo, L. R., 18 Ch. D., 218*; *Spencer* v. *Duckworth, L. R., 18 Ch. D., 634*, referred to. BACHMAN v. BACHMAN [I. L. R., 6 All., 583

101. ——— *Bequest to orphans in Military Orphan Asylum—Direction to trustees.*—A special case was stated for the opinion of the Court as to whether *S M* took a vested interest in the sum of R6,325 under the following clause of will "I paid to the M O Society R6,000 for *S M*, and invested R6,826 the interest on which I directed to be paid to the mother of *S M* Now I direct my trustees after the death of the mother of *S M*, to realize the latter sum and pay it to the M O Society, for *S M*, in terms of the regulations of the Society." *Held* that the bequest was *prima facie* for the benefit of the daughter That having regard to the regulations of the M O Society, the bequest was a gift for the benefit of the Society generally. That if the will had given the mother the interest for life, instead of saying it had been given, it would have vested. That the interest vested in *S M* at once, and formed part of her estate. IN THE MATTER OF THE GOODS OF COLLINS [Bourke, O. C., 104

102. ——— ——— *Gift of life interest or corpus—Discretion of executors to hand over corpus—Costs.*—*C*, a Portuguese inhabitant of Bombay, died in April 1884, leaving three sons, *M*, *S*, and *J* (defendant No 3), and two daughters, *R* and *C*. By her will she directed that her daughter *R* should enjoy the rents and profits of certain immoveable property for her life, and that after her death the said property should be sold, and the sale-proceeds (after payment of two legacies thereout) be divided equally between her two sons *S* and *J*. The seventh clause of the will was as follows: "7. I further direct that the amount which may fall to the share of my son Joaquim Amador Bocarro under (c) of paragraph 6 above should be held in trust by my executors hereinafter named and converted by them into Government securities; the interest accruing therefrom should be paid for the maintenance of my said son Joaquim Amador Bocarro Should my said son die leaving a widow or issue, his share shall be given to such widow or issue according as he may devise and bequeath. Should my said son Joaquim Amador Bocarro reform himself, and take off all his evil tendencies, and lead a steady, quiet, and orderly life, or should he, on account of illness or other reasonable cause, be in urgent need of pecuniary assistance, I leave it to the discretion of my executors either to make over to my said son Joaquim Amador Bocarro for his absolute use the whole of the amount which he may be entitled to under (c) of paragraph sixth above or such part or parts thereof as to my executors may appear proper" *S* died in 1885, unmarried and intestate, leaving his two brothers, *M* and *J*, and his two sisters, *R* and *C*, him surviving. *M* died in 1889, leaving a widow and children. In 1891 *J* mortgaged all his interest under the said will to the plaintiffs to secure a loan of R6,100 In 1893 *R* died, and in 1894 *C* died. Subsequently the executors were proceeding to sell the property mentioned in the will when the plaintiffs filed this suit praying for a declaration that they had a valid charge upon *J's* interest therein, and that his interest should be ascertained and declared, and he himself ordered to pay the amount of their claim; that the property should be sold and their claim paid out of the funds; that

WILL—*continued.*

9 CONSTRUCTION—*continued.*

provisions of the seventh clause. *Held* (1) that the defendant *J* had no interest in the house mentioned in the will. He was only entitled to a share of the proceeds after it had been sold. (2) That his interest in his share of such proceeds was merely a life-interest, with power to appoint to his widow or issue, and that he was not entitled to be paid the corpus of such share, but that the executors might,

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charge upon *J*'s interest in the sale-proceeds of the said property to the extent of their mortgage. (5) That *J*'s interest was (after deducting the legacies given by the sixth clause) an absolute interest

costs, that the executors and defendants Nos. 4 to 12 should have their costs paid out of *J*'s share in *S*'s

designating how they were to take. To that extent the absolute gift to *J* was qualified. Should the gift over fail, the absolute gift to *J* would remain unimpaired. *Held* as to the costs (varying the decree of the Court below) that the executor's costs, taxed as between attorney and client, be paid out of the estate as well as the costs of the defendants 4 to 12. Plaintiffs and *J* to bear their own costs respectively: plaintiffs to be at liberty to add their costs to their mortgage-security. In other respects the decree of the lower Court to be confirmed with costs other than the costs of defendants 4 to 12 whose costs may be added to their costs in the Court below. BECHAR AKHA *v.* DE CRUZ I. L. R., 19 Bom., 770

103.————— *Bequest to executors and trustees in trust for son of testator and his widow—Life-interest—Estate in fee—Control and management of executors and trustees.*—A Hindu by his will bequeathed certain property to his executors and trustees "upon trust for my son *T* and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof, and after the death of my son *T*, in trust to allow his widow to occupy and use the same and

WILL—*continued.*

9. CONSTRUCTION—*continued.*

clause, he was absolutely entitled to the property

trust for *T* and his heirs," which, standing alone,

Held also that the trustees were intended to take the legal estate and to have the control of the property, allowing *T* to enjoy the income of it. SMITH *v.* TRIBHOVANDAS MANGALDAS [I. L. R., 19 Bom., 401

104. ————— *Bequest to wife with obligation of maintaining and educating children—Interest taken under such bequest.*—*B* died in 1891 leaving a widow (defendant No. 1) and two sons, *P* and *D* (defendants Nos 4 and 5). By his will he bequeathed the residue of his property to trustees (of whom his widow was one) in trust to pay the rents and income thereof to his widow for life, "she thereout maintaining, educating, and bringing

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105. ——— Trust—*Creation of trust—Uncertainty.*—A Hindu by his will, after appointing

v. SUBBARAYA . . I. L. R.,

WILL—*continued.*

9. CONSTRUCTION—*continued.*

106.———————— *Validity of trust*

sum shou... the childr... there was... attesting... children. ADMINISTRATOR GENERAL *v.* LAZAR

[I. L. R., 4 Mad., 244

107.———————— *Precatory trust* —*W R*, by his will, made the following gift to his wife, *M A R* "I give to my dearly beloved wife the whole of my property both real and personal (described), feeling confident that she will act justly

estate as belonging to such estate. *Held* by the

[I. L. R., 2 All., 55

create a precatory trust, the words must be such that the Court finds them to be imperative on the first taker of the property, and the subject of the gift over must be well defined and certain MUSSOORIE BANK *v.* RAYNOR

[I. L. R., 4 All., 500: L. R., 9 I. A., 70

108.———— Expression of wish—*Bequest.*

this will, to pay every month R614-7-1 (being one

... for ever, and also the pay of *G K* and *M A* will be defrayed for ever, *i e*, generation after generation. The rest of the servants will be paid for life only" *Held* that these words constituted a bequest, and

limiting the source of the legacies. SULEMAN KADR *v.* DORAB ALI KHAN

[I. L. R., 8 Calc., 1: L. R., 8 I. A., 117

109.———— Will confirming trust-deed —*Construction of deed—Forfeiture.*—*S*, being desir-

appoint, and in default of such direction and appointment, unto the next heirs of *S*, their heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and profits of the real property, and employ the residue and accumulations as well as the produce and accumulations of the

Wilson v *Pigott*, 2 *Ves. Jun.*, that the powers of the trustees (under the deed) did not cease on the death of *S*, and that the directions in the will, although not strictly within the words, amounted to a good

and that the trustees were not authorized to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably sufficient for those purposes General debts and liabilities are not charges against property forfeited upon conviction of felony. HURRYDOSS BONERJEE *v.* HOGG 1 Ind. Jur., O S, 86

110. ——— Gift of residue to a class— —*Postponement of period of distribution—Vested interests—Succession Act, ss 98, 101, 102*—A testator gave his residuary estate to trustees upon trust to invest and "to pay, transfer, or divide the same unto, between, or among the children of my

WILL—*concluded.*

9. CONSTRUCTION—*concluded.*

her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters" The testator left him surviving his two brothers and a sister, *C A* and *B*, both died before the eldest of the testator's nephews or nieces attained 21 or married. In a suit instituted by the widow and executrix of *A* to have it declared that the above bequests were void under ss. 101 and 102 of the Succession Act, and the testator died intestate as to the residue of his estate, and that she as executrix of *A* was entitled to receive a one-third share of the said estate and the accumulations thereof,—*Held*

valid. *Semble*—S. 98 of the Succession Act applies only to vested interests. MASEYK *v.* FERGUSSON
[I. L. R., 4 Calc., 304

111.———— ———— ———— *Postponement of period of distribution—After-born child, Share of* ... —A testa- ... upon trust, ... the same

be double that of each and every daughter, and the shares of each son shall be paid to him or them ...

... ship between and among all the said sons and daughters." After the death of the testator, and before the period of distribution arrived, a son was born to *B* and one of the sons of *A* died intestate and ...

112.———— Residuary estate of moveable and immoveable property—*Claims to, against executors and trustees*—If a testator ...

DEBENDRONATH TAGORE　　I. L. R., 2 Calc., 45

WILLS ACT (XXV OF 1838)

———— s. 3—*Application of Act—East Indians domiciled out of the jurisdiction of High Court.*—The Wills Act, XXV of 1838, applied to the wills of East Indians, whether domiciled within or

WILLS ACT (XXV OF 1838)—*concluded*

beyond the testamentary jurisdiction of the High Court. HOGG *v.* GREENWAY　.　. 2 Hyde, 3

(the illegitimate daughter of a Mahomedan woman) who resided and died outside the limits of the ordinary civil jurisdiction of the Court. GREENWAY *v.* HOGG. HOGG *v.* GREENWAY
[Bourke, A. O. C., 111: Cor., 97

WINDOWS OR DOORS.

———— Suit to close—

See CASES UNDER JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

See RIGHT OF SUIT—PRIVACY
[I. L. R., 18 Mad., 163

See TRESPASS—GENERAL CASES.
[3 B. L. R., A. C., 411

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPONDENT.
[I. L. R., 17 All., 518

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 15 Bom., 370

See PAUPER SUIT—APPEALS.
[I. L. R., 18 Bom., 464

WITHDRAWAL OF APPLICATION FOR EXECUTION.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 12 All., 179, 393
I. L. R., 17 All., 106
L. R., 22 I. A., 44
I. L. R., 18 Calc., 462, 515, 635
I. L. R., 15 Mad., 240

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.
[I. L. R., 23 Calc., 817

WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[I. L. R., 22 Calc., 898

WITHDRAWAL OF SUIT.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—PLAINT.
[I. L. R., 9 All., 191
L. R., 13 I. A., 134

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE.
[Agra, F. B., 1

See DEKKAN AGRICULTURISTS' RELIEF ACT, s. 53 . I. L. R., 12 Bom., 684

See DIVORCE ACT, s. 35
[6 B. L. R., Ap., 6
I. L. R., 25 Calc., 222

See MULTIFARIOUSNESS.
[I. L. R., 16 All., 279

See PRACTICE—CIVIL CASES—AFFIDAVITS
[3 Bom., O. C., 55

See PRACTICE—CIVIL CASES—WITHDRAWAL OF SUITS OR APPEALS Cor., 67
[I. L. R., 7 Bom., 287

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM
[I. L. R., 1 All., 324
I. L. R., 10 Mad., 160
I. L. R., 17 All., 53

See RES JUDICATA—RELIEF NOT GRANTED.
[I. L. R., 21 Calc., 265

——— Order allowing—

See APPEAL—DECREES.
[I. L. R., 8 All., 82
I. L. R., 18 Calc., 322
I. L. R., 15 All., 169
I. L. R. 16 All., 19
I. L. R., 17 All., 97

See APPEAL—ORDERS.
[I. L. R., 6 All., 211

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622
[I. L. R., 11 Mad., 322
I. L. R., 15 All., 169

———Power to allow—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT
[I. L. R., 24 Calc., 129

DOYAL CHUNDER GHOSE *v.* DWARKANATH MISSER
[Marsh., 148: W. R., F. B., 47
1 Ind. Jur., O. S., 41: 1 Hay, 347

MODHOO SOODUN MULICK *v.* PANCH COWREE MULICK . 7 W. R., 302

WITHDRAWAL OF SUIT—*continued.*

BEER CHUNDER JOBRAJ *v.* TARINEE CHURN ROY
[11 W. R., 46

RAMANATH DUTT *v.* JOYKISHEN MOOKERJEE
[11 W. R., 3

In other cases rent suits were held not to be excluded RAM CHARAN BYSAK *v.* HARVEY
[2 B. L. R., S. N., 11: 10 W. R., 373

WOOMANATH ROY CHOWDHRY *v.* SREENATH SING . . . . 15 W. R., 260

Since the Bengal Rent Act, 1869, however, the procedure in rent suits has been, and is now, the same as in any other suits.

1. ——— Sanction for fresh suit—*Act VIII of 1859, s. 97.*—Civil Courts had no power to sanction the bringing of a fresh suit, except under s. 97, Act VIII of 1859. ARGOON SINGH *v.* HUREE HUR SINGH . . 14 W. R., 472

ANUND MOHUN PAUL CHOWDHRY *v.* RAM KISHEN PAUL CHOWDHRY GOBIND CHUNDER PAUL CHOWDHRY *v.* RAMKISHEN PAUL CHOWDHRY
[2 W. R., 297

2. ——— Leave to one of several co-plaintiffs to withdraw—*Consent of co plaintiff—Civil Procedure Code, 1877, s. 373.*—The proviso in the third clause of s. 373 of the Code of Civil Procedure does not deprive the Court of power to permit one of several co-plaintiffs to withdraw unconditionally from a suit, even though his co-plaintiffs do not consent to his withdrawal. MOHAMAYA CHOWDHRAIN *v.* DURGA CHURN SHAHA
[9 C. L. R., 332

3. ——— Withdrawal with consent of defendant—*Civil Procedure Code, 1859, s. 97—Right to bring fresh suit.*—A plaintiff filed a plaint for an account to be taken. The plaintiff withdrew the plaint, without the permission of the Court to withdraw from the suit, with liberty to [illegible]

[illegible] to arbitration, and also for the account, which was a relief to which he was entitled The section only applied to cases where the plaintiff withdraws from the suit without the consent of the defendant. JUGGOBUNDO CHATTERJEE *v.* WATSON & CO
[Bourke, A. O. C., 162

S. C. in Court below . Bourke, O. C., 250

4. Withdrawal of claim under s. 230, Act VIII of 1859—*Right to bring subsequent suit.*—In a suit to recover the possession of land of which the plaintiff had been dispossessed in execution of a decree against the first defendant, it appeared that the plaintiff had applied within one

WITHDRAWAL OF SUIT—*continued.*

under the section. Before the claim came on for hearing, the plaintiff was allowed by the Court to withdraw the proceeding, with liberty to bring a fresh suit upon the claim set up. The plaintiff subsequently brought the present suit. *Held* that the former proceeding was a suit within the meaning of s. 97 of the Code, and liberty having been given on its withdrawal before decree to bring another suit, the present suit was well brought. SUBBARAMIEN *v.* PONNUSAWMY CHETTY . . . 5 Mad., 298

5. ——— Substitution of assignee of

Court had no power to make. JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE [9 W. R., 309

6. ——— Withdrawal after issue joined—*Civil Procedure Code, 1859, s. 97*—

7. ——— *Discretion of Court—Power to interfere with discretion on appeal*.—Where, after issue joined, the plaintiff was permitted to withdraw his suit, with liberty to sue again,—*Held* that to allow withdrawal and fresh suit at that stage was a discretion to be exercised with great caution, but the discretion having been exercised it could not be interfered with on appeal by the Judge. OMESH CHUNDER MUNDUL *v.* THAKOOR DOSS MOOKERJEE . 23 W. R., 345

8. ——— Withdrawal before final judgment—*Discretion of Court—Power to interfere with discretion on appeal—Civil Procedure Code, 1859, s. 97*.—A lower Appellate Court had no

issues, at any time before final judgment, to withdraw from the suit with liberty to bring a fresh suit in the same matter. RAM KANYE DUTT *v.* HAROO CHUNDER MOJOOMDAR . 17 W. R., 229

9. ——— S. 97 of Act VIII of 1859 applied only to cases where a plaintiff before final judgment is permitted by the Court to withdraw from his suit, with liberty to sue again. ANUND MOHUN PAUL CHOWDHRY *v.* RAM KISHEN PAUL CHOWDHRY. GOBIND CHUNDER PAUL CHOWDHRY *v.* RAMKISHEN PAUL CHOWDHRY [2 W. R., 297

10. ——— Leave to bring fresh suit—*Civil Procedure Code, 1859, s. 97*.—Permission under s. 97 to bring a fresh suit could not be given after final judgment has been pronounced. SHEORAJ

WITHDRAWAL OF SUIT—*continued.*

NUNDUN SINGH *v.* RAJCOOMAR BABOO DEO NUNDUN SINGH . . . . . 24 W. R., 23

11. ——— *Failure to prove case—Dismissal of suit—Procedure*.—The power to dismiss a suit, with liberty to bring a fresh one for the same matter, is limited to cases where the suit fails by reason of some point of form: such ... joined, ... WAT-

... C., 43
13 Moore's I. A., 160

See MONA BIBEE *v.* OOMED ALI . 16 W. R., 276

12. ——— *Civil Procedure*

on the ground that the defence to the suit was such that the suit must fail if proceeded with. ZAHURUN-NISSA *v.* KHUDA YAR KHAN [I. L. R., 3 All., 528

13. ——— Ground for allowing withdrawal—*Civil Procedure Code, 1859, s. 97—Inability to prove claim*.—Where a plaintiff asked for permission to withdraw his plaint saying that it would be out of his power to adduce the evidence, which he pointed out as existing in certain records, within the period fixed by the Court for hearing the case, the Court was competent, under s. 97, Act VIII of 1859, to grant him permission to withdraw the suit. PORESH NARAIN ROY *v.* SURUT SOONDUREE DEBEE . . . . . 16 W. R., 100

14. ——— *Insufficiency of evidence*.—In a suit by one of several sharers of certain mortgaged property for contribution on

suit with leave to bring a fresh one. KHATOON KOONWAR *v.* HURDOOT NARAIN SINGH [20 W. R., 163

15. ——— Compromise of suit on appeal—*Civil Procedure Code, 1859, s. 97—Subsequent*

terms have been broken, a party to it is entitled to maintain a suit to enforce it. GOLAB SINGH *v.* CHEDA SINGH . . . . . 3 Agra, 135

16. ——— Private agreement—*Restoration of suit*.—Where a plaintiff filed a petition withdraw ... the suit should be ... ant had ... not fulfil ... n to the ... was no

WITHDRAWAL OF SUIT—*continued.*

reason for setting aside the petition for withdrawal of the suit as null and void. SHUMSHER BAHADOOR *v.* MAHOMED ALI BEG . . . 2 Agra, 158

17. ——— **Suit for possession**—*Subsequent suit for rent—Civil Procedure Code, 1859, s. 97.*—There was nothing in s. 97, Act VIII of 1859, to prevent a suitor from instituting a claim for possession and afterwards bringing one for rent RAMKISHORE MUNDLE *v.* MOORAD MUNDLE [W. R., 1864, Act X, 67

18. ——— **Suit for possession after release from attachment in execution in another suit**—*Civil Procedure Code, 1877, s. 97*—A claim to attached property made under Act VIII of 1859, s. 246, was dismissed, and the claimant in the year 1875, instituted a regular suit against the decree-holder under the provisions of that section. The decree-holder then released the property from attachment, and the plaintiff withdrew his suit. The same property was afterwards, in the year 1878, attached again and sold in execution of the same decree. *Held* that a subsequent suit for possession of the property against the purchaser at the execution sale was not barred under s 97 of Act VIII of 1859 *Eshen Chunder Singh* v. *Shama Churn Bhutto, 11 Moore's I. A., 7,* cited. MUKHODA SOONDURY DASI *v* RAM CHURN KARMOKAR I. L. R., 8 Calc, 871

19. ——— **Suit withdrawn under Regulation law**—*Civil Procedure Code, 1859, s. 97.*—A plaintiff without leave of the Court withdrew from a suit in 1853 He filed a fresh suit in the same cause of action in 1866. *Held* that he was not debarred from doing so, as the provisions of s 97 of the Code of Civil Procedure did not apply. VINAYAK JOSHI *v.* JANARDAN JOSHI . 7 Bom., A. C, 23

20. ——— **Nature of fresh suit**—*Fresh*

against the defendant to recover the said sum of £678-3. That suit was based upon a call order, dated 11th November 1880, which it sought to enforce By an order made in that suit on 7th April 1883, the plaintiffs were permitted to withdraw it, with liberty to bring a fresh suit for the same cause of action. The present suit to enforce a balance order, dated the 24th February 1881, was filed on 11th February 1885. It was contended on behalf of the defendant that the present suit being based upon an order which was in existence at the date of the previous suit, the

precluded from bringing the second suit upon the balance order, and that the suit was properly framed.

LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BURJORJI SORABJI LYWALLA [I. L. R., 9 Bom , 346

21. ——— **Withdrawal of suit by next friend**—*Suit on behalf of a minor—Civil Procedure Code (Act VIII of 1859), s 97—Fraud.*—Where a Court has reason to believe that a suit is

SAFOOI *v* NUNDAMONI DASSEE [I. L. R., 10 Calc., 357

22. ——— **Withdrawal wrongly allowed**—*Arbitration—High Court's powers of revision—Civil Procedure Code, ss. 2, 373 588, 622—Practice—Notice to show cause—Amendment of plaint.*—An order under s. 373 of the Civil Procedure Code permitting the withdrawal of a suit, with liberty to bring a fresh one, not being made appealable by s. 588 or being a "decree" within the meaning of s. 2. is not appealable. When the plaintiff in a suit applies for permission to withdraw it, with liberty

sented by his mother and guardian *B*, to have the adoption by *K* of *G* set aside and for certain other reliefs. The matters in difference in the suit were referred to arbitration, and an award was made in favour of the defendants The plaintiff preferred objections to the award. Before these were disposed of, *K* died The Court of first instance subsequently allowed the objections and set aside the award. The minor defendant then applied to the High Court for revision of the order setting aside the award This

fresh one, on the ground that, *K* having died, he was entitled to possession of the immoveable property left by *H*. This permission was granted. The minor

WITHDRAWAL OF SUIT—*continued.*

had referred their differences to arbitration, and an award had been made in favour of the defendant and

seriously prejudiced by such a course, and the suit … *K*, while … favour, … of the … suit for possession on the separate cause of action which had arisen. *Stahlschmidt* v *Walford, L. R., 4 Q. B. D., 217*, referred to. The High Court refused to allow the plaint in the suit to be amended by the addition of a claim for possession of the property left by *H*. KALIAN SING *v.* LEKHRAJ SING

[I. L. R., 6 All, 211

23.————————*Specific Relief Act (I of 1877), s. 21—Arbitration—Agreement to refer—Order under s. 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s. 373, pending the reference, granting plaintiff permission to withdraw with liberty to bring fresh suit*—The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under

Specific Relief Act (I of 1877) *Held* that the Court in the former proceedings had no power to

period within which the award was to be made expired before the bringing of the second action. *Per*

its file and treat it as awaiting the Court's decision. SHEOAMBER *v* DEODAT . I. L. R., 9 All., 168

24. ———— Civil Procedure Code

WITHDRAWAL OF SUIT—*continued.*

tember 1874, *V* borrowed R5,000 from *R N* and

and *V* to recover principal and interest due under his mortgage bond. *Held* that the claim of *R N* was not barred. VENKATA *v.* RANGA

[I. L. R., 10 Mad., 160

25. ———————— *Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s. 43*—Where a suit is withdrawn with permission under the first paragraph of s 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought. A plaintiff,

[I. L. R., 17 All., 63

26. ———————— *Dismissal of suit—Decree containing clause stating that a fresh suit might be instituted as to a part of the subject-matter—Res judicata.*—A suit for possession of

the suit was based. No appeal was preferred from this decree. Subsequently the plaintiff brought another suit upon the same title to recover possession of the one-third share referred to in the order just quoted *Held* by the Full Bench that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order; that the fact that the decree was not appealed against did not give the order contained in it, which was an absolute nullity, any effect *Kudrat* v. *Dinu, I. L. R., 9 All, 155; Ganesh Rai* v. *Kalka Prasad, I. L. R, 5 All., 595; Salig Ram Pathak* v. *Tirbhawan Pathak, Weekly Notes, All, 1885, 171*, and *Muhammad Salim* v. *Nabian Bibi, I. L. R., 8 All, 282*, explained. SUKH LAL *v.* BHIKHI

[I. L. R., 11 All., 187

27. ———————— *Jurisdiction—Withdrawal of part of claim—Part of property in suit within and part without the jurisdiction of the Court*—Suit for partition and possession of an undivided share of property sold to plaintiff by an

WITHDRAWAL OF SUIT—*continued.*

aged gosha lady of the class of Canarese Mahomedans called Navayats. The property sold was the vendor's share as heiress of her father, brother, and sister,

having been shown to be otherwise than *bonâ fide*) did not operate to take away the jurisdiction of the Court to adjudicate on the plaintiff's suit. KHATIJA *v.* ISMAIL . . I. L. R., 12 Mad., 380

28. ———— *Summons not served on defendant—Suit for damages—Civil Procedure Code (Act XIV of 1882), ss. 97, 477, 491—Arrest of defendant before judgment under s. 477 of Civil Procedure Code (Act XIV of 1882)—Subsequent application by plaintiff under s. 373 of Civil Procedure Code for leave to withdraw suit—*

for damages for breach of contract. The suit was filed on the 13th May 1890 The summons was not served on the defendant, but on the 16th May the

fresh suit on the same cause of action The defendant's Counsel objected, and claimed either that the plaintiff should continue his suit to a hearing, or that the suit should be dismissed with costs, and that compensation for his arrest should be awarded to the defendant under s 491 of the Civil Procedure Code The plaintiff contended that, inasmuch as the summons had not been served on him, the defendant was not entitled to appear, and that no compensation could be awarded to him *Held* (1) that, inasmuch as the plaintiff had by a legal process brought the defendant before the Court, the defendant had the right to appear at the hearing of the case, although no summons had been served upon him, and that he was entitled to object to the suit being dismissed under Rule of Court No. 64, (2) that under the circumstances the defendant was entitled to compensation for his arrest under s. 491 of the Code of Civil Procedure; (3) that the plaintiff might withdraw the suit under s 373 of the Civil Procedure Code with liberty to bring a fresh suit on payment of the costs incurred by the defendant in the present suit. SYED ALI *v.* ADIB [I. L. R., 15 Bom., 160

29. ———— *Institution of fresh suit.*—Where *A* instituted a suit to establish his right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted another suit to establish his right to sell the same property in satisfaction of another decree against *B*,—*Held* that the second suit was not barred by the provisions of s. 373 of the Code of Civil Procedure. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY [I. L. R., 21 Calc., 265

30. ———— *Withdrawal of suit without permission to bring fresh suit Application of s 373 of the Civil Procedure Code to suits in Revenue Courts—Act X of 1859.—*

CHOWDHRY . . . I. L. R., 21 Calc., 425

MOKUNDA BULLAVKAR *v.* BHOGABAN CHUNDER DAS . . I. L. R., 21 Calc., 514

31. ———— *Suit withdrawn without liberty to bring a fresh suit—Subsequent suit for the*

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from the

title rested on an instrument executed by him in 1892 It was objected that the instrument was not binding after the death of the grantor. The plaintiff thereupon withdrew his suit without obtaining leave to sue again He subsequently obtained a like

[I. L R., 21 Mad., 35

32. ———— *Fresh cause of*

suits and the reliefs claimed under them are different, and s. 373, Civil Procedure Code, does not apply. *Kamini Kanto Roy* v. *Ram Nath Chuckerbutty, I. L R., 21 Calc. 265*, followed. *Quære*—Whether the mere fact that a plaintiff withdraws with the consent of the defendant, but without leave of the Court, makes s. 373, Civil Poocedure Code, inapplicable. The observation of

See JUGGOBUNDO CHATTERJEE *v.* WATSON & Co [Bourke, A. O. C., 102

WITHDRAWAL OF SUIT—*continued.*

33. ——— Costs—*Power to award costs—Withdrawal without leave.*—The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so with liberty to bring another suit for the same matter. BRASS *v.* TIRUVENGADA PILLAI . . . 1 Mad., 247

34. ——— *Power to award Costs—Civil Procedure Code, 1859, s. 97.*—Where the plaintiff applied, under s. 97, Act VIII of 1859,

HOSSAINI BIBI *v.* PERI KHANUM [1 B. L. R., O. C., 45

35. ——— *Form of order—Civil Procedure Code, 1859, s. 97.*—A plaintiff who is permitted to withdraw from his suit under s. 97, Act VIII of 1859, must pay the defendant's costs. On such withdrawal, the proper order to be recorded is not one of dismissal, but one simply permitting the plaintiff to withdraw the suit, with liberty to bring a fresh suit for the same matter on payment of costs or otherwise as the Court may direct. DOUCETT *v.* WISE . . 1 W. R., 322

36. ——— *Payment of costs not made condition precedent to fresh suit—Power to stay suit.*—*A*, having brought an action against *B*, was allowed to withdraw, with leave to bring a fresh suit, and was also ordered to pay the costs. *Held* that, the payment of the costs not having in terms been made a condition precedent [illegible]

[2 Hyde, 212

37. ——— *Small Cause Court.*—A Small Cause Court is not bound to allow a plaintiff to withdraw a suit, on the ground that he

ordered. In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the first defendant's costs. RAMA CHANDRA SHASTRY *v.* PAPU AIYAN . 3 Mad., 27

38. ——— Withdrawal of appeal—*Power of Appellate Court.*—An Appellate Court has authority to permit an appeal to be withdrawn. RAM PERSHAD OJHA *v.* BHUROSA KOONWAR [9 W. R., 328

39. ——— *Permission of Court—Notice of withdrawal.*—An appellant [illegible]

and notice of withdrawal had been given to the respondent, but not until costs had been incurred,—*Held* that the appellant was not at liberty to with-draw [illegible] that the

[illegible] ... ad., 368

40. ——— Withdrawal of suit on appeal—*Act XXIII of 1861, s. 37—Power of Appellate Court.*—Under s. 37, Act XXIII of 1861, the High Court, upon appeal from a Judge sitting in the exercise of the ordinary original jurisdiction of the Court, had power, before pronouncing final judgment in appeal, to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit. GREGORY *v.* DOOLEY CHAND [14 W. R., O. C., 17

41. ——— *Civil Procedure Code, 1859, s. 97—Exercise by Appellate Court of powers under s. 37, Act XXIII of 1861.*—Where application was made for leave to withdraw a suit,

tion under the power given by s. 37, Act XXIII of 1861. BOMBAY CITY BANK *v.* MOONJEE HURRYDOSS . . . . Bourke, A. O. C., 99

42. ——— *Civil Procedure Code, 1859, s. 97.*—The plaintiff having sued, and the issues having been laid down as though the suit was for separate possession, the decree of the lower Court for joint possession was set aside, with leave to plaintiff, under Act VIII of 1859, s. 97, to bring a fresh suit for joint possession. JUGGURNATH DEB NAZIR *v.* MOHEBOOLLAH . . 17 W. R., 164

43. ——— *Appellate Court, Powers of—Discretion, Exercise of—Civil Procedure* ... appeal

... that with reference to

WITHDRAWAL OF SUIT—*concluded.*

Code. GANGA RAM *v.* DATA RAM [I. L. R., 8 All., 82

45. ———— *Civil Procedure Code, ss. 373, 374, 647—Application for execution withdrawn by decree-holder—Act XV of 1877, sch II, art. 179 (4).*—S 647 of the Civil Procedure Code makes ss. 373 and 374 applicable to proceedings in execution of decree. *Kifayat Ali* v. *Ram Singh, I L. R., 7 All, 359,* and *Pirjade* v. *Pirjade, I L. R., 6 Bom, 681,* followed. *Tarachand Megraj* v. *Kashinath Trimbak, I. L. R., 10 Bom, 62,* and *Ramanandan Chetti* v. *Periatambi Chervai, I. L. R., 7 Mad., 250,* dissented from. A first application for execution of a decree was withdrawn by the decree-holder on account of formal defects, the Court returning the application, but without giving permission to the decree-holder to withdraw with leave to take fresh proceedings. *Held* that, with reference to the second paragraph of s 373 read with s 647 of the Code, the decree-holder was precluded from again

application presented five years after the decree barred by limitation, with reference to art. 179 of the Limitation Act. SARJU PRASAD *v.* SITA RAM [I. L. R., 10 All., 71

46. ———— Revocation of withdrawal —*Civil Procedure Code, 1859, s 97.*—A plaintiff

WITNESS—CIVIL CASES.

WITNESS—CIVIL CASES—*continued.*

See CASES UNDER COMMISSION—CIVIL CASES.

See DIVORCE ACT, s. 52 [3 B. L. R., Ap., 6

See CASES UNDER EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—DEPOSITIONS

See CASES UNDER EVIDENCE ACT, 1872, s. 33.

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—WITNESSES

See CASES UNDER WILL—ATTESTATION.

———— Attestation by—

See STAMP ACT, 1879, s. 3, CL 4. [I. L. R., 22 Calc, 757
I. L. R., 17 All, 211

———— Competency of—

See LAND ACQUISITION ACT, 1870, s. 19. [I. L. R, 17 Bom., 299

———— Damages by false statement of—

See CASES UNDER DEFAMATION.

See EVIDENCE ACT, s. 132. [I. L. R, 12 Bom., 440

See RIGHT OF SUIT—WITNESS. [I. L. R, 10 All, 425
I. L. R., 10 Mad., 87
I. L. R., 15 Calc., 264

———— Deposition of—

See CASES UNDER EVIDENCE ACT, s 33

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 16 Mad., 220

———— Enforcing attendance of—

See PRACTICE—CIVIL CASES—COMMISSION . . I. L. R., 23 Calc., 404

———— Examination of—

See AMEEN . 1 B. L. R., S. N., 1, 3
[9 W. R., 83
11 W. R., 423
17 W. R., 282
19 W. R., 14

WITNESS—CIVIL CASES—*continued.*

See COMPANY—WINDING UP—COSTS AND CLAIM ON ASSETS
[I. L. R., 14 Calc., 219

——— Impeaching credit of—

See EVIDENCE ACT, s 155.
[I. L. R., 17 Calc., 344

——— Legacy to—

See WILL—CONSTRUCTION.
[I. L. R., 4 Mad., 244

——— Non-attendance of—

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 177 (1859, s 170).

——— Omission to examine—

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL
[I. L. R , 13 Bom., 336

——— Order for examination of—

See INSOLVENT ACT, s 36.
[I. L. R., 11 Bom., 61
I. L. R., 22 Bom , 447

——— Privilege of—

See ARREST—CIVIL ARREST.
[14 B. L. R., Ap., 13
I. L. R., 1 Calc., 78
4 Mad., 145

See CASES UNDER DEFAMATION.

See EVIDENCE ACT, s 132
[I. L. R., 3 Mad., 271

See LIBEL . I. L. R., 14 Bom., 97

——— Refusal of party to attend as—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[B. L. R., Sup. Vol., 716

——— Refusal to summon—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.
[I. L. R., 16 All., 218

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. ——— Arbitrator—*Suit after award is set aside* —If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the [illegible]

[illegible] MOHIMA CHUNDER DUTT . 17 W. R., 516

2. ——— Attorney—*Advocate—Competent witness.*—An attorney who has acted as advo[illegible] his case in [illegible] in the case.

[illegible] B. L. R., Ap., 23

WITNESS—CIVIL CASES—*continued.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*concluded.*

[illegible]

RAMASAMI AIYAN *v.* RAMU MUPAN . 5 Mad., [illegible]

4. ——— *Magistrate giving evidence before himself.*—Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused QUEEN EMPRESS *v.* MANIKAM . I. L. R., 19 Mad , 263

5. ——— Munsif—*Witness as to facts judicially* [illegible] called on [illegible] in the cour[illegible] Munsif, a[illegible] MOUS . . . . . 6 Mad., Ap., 42

6. ——— Person against whom affiliation order is sought—*Criminal Procedure Code, 1882, s. 485—Evidence Act (I of 1872),* [illegible] [illegible]eedings [illegible] Proce[illegible] [illegible]eedings [illegible]ce Act, [illegible]mpetent [illegible]

BISMILLA JAN . I. L. R., 16 Calc., 781

HIRA LAL *v.* SAHEB JAN I. L. R., 18 All., 107

7. [illegible] assessor under [illegible]

value of the land. But no objection was taken to his [illegible] ... [illegible]—*Held* that a person who is appointed assessor under s. 19 of the Land Acquisition Act (X of 1870) performs quasi-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings SWAMIRAO *v.* COLLECTOR OF DHARWAR
[I. L. R., 17 Bom., 299

8. ——— Wife—*Evidence of wife to prove non-access—Husband and wife—Presumption of legitimacy—Illegitimacy—Presumption of non-access—Evidence Act (I of 1872), ss 112 and 118.* —A wife can be examined as to non-access of her [illegible]

[illegible]

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES.

9. ———— Duty of Court—*Securing attendance of witnesses.*—Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses. NILMONEE BANERJEE *v.* SHUBBO MONGOLA DEBEE . 6 W. R., 14

10. ———— *Civil Procedure Code, 1852, s. 159.*—Under s 159 of the Civil Procedure Code (Act XIV of 1882), a party to a suit is entitled, as of right, to obtain summonses for his witnesses any time before the day fixed for the disposal of the suit. BAI KALI *v.* ALARAKH PIRBHAI . . I L. R., 15 Bom., 86

11. ———— *Application for summons to cite witnesses*—A party is entitled at any stage of the case before hearing to apply for a summons to cite witnesses without reference to the number of such applications which he may have previously made, and it is the duty of the Court to comply with such application, if any time be left before the hearing of the cause. ANURUP CHANDRA MUKHOPADHYA *v.* HIRAMANI DASI

[3 B. L. R., Ap , 38

S. C. ONOOROOP CHUNDER MOOKERJEE *v.* HEERA MONEE DOSSEE . . 11 W. R., 418

HARI DAS BAISAKH *v* MOAZAM HOSSEIN

[8 B. L. R., Ap , 16 : 15 W. R., 447

written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence at the settlement of issues. ANUND CHUNDER BANERJEE *v.* WOOMESH CHUNDER ROY

[1 Ind. Jur., O. S , 15 : 1 Hyde, 147

The subsequent Codes, however, expressly provide for the attendance of witnesses at a settlement of issues; *see* s. 159, Civil Procedure Code, 1882.

13. ———— Discretion of Court to sum-

MAHOMED *v.* BYDNATH DOSS CHOWDHRY

[5 W. R., Act X, 6

HARA CHAND PORAMANICK *v* KRISHTO MONEE GIREE . . . . . 1 W. R., 298

MATUNGUNEE DABEA *v.* KALEE DABEA

[2 W. R., 4

See NEEM CHUND DEY *v.* ANUND COOMAR ROY CHOWDHRY . . . . 7 W. R., 147

14. ———— *Selection of wit-*

of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice. RAMDHAN MANDAL *v.* RAJBALLAB PARAMANIK

[6 B. L. R., Ap., 10

15. ———— *Power to refuse to summon witness*—A Court has no power to refuse to summon witnesses when expressly requested by a party to do so unless the witnesses are required to be summoned in such a manner, or in such numbers, as clearly indicates a vexatious desire of obstructing the course of justice. RAM PHUL PANDEY *v.* WAHED ALI KHAN . . . . . 14 W. R., 66

16. ———— *Refusal to sum-*

17. ———— Preliminaries to summoning witness—*Materiality of evidence.*—Before the Court makes an order compelling the attendance of a party to the suit, it must be satisfied that his evidence will be material. GOPAL CHUNDER HAZRAH *v.* MOHESH CHUNDER BANERJEE . 21 W. R., 44

18. ———— Summoning plaintiff as witness—*Reasons for summons—Duty of Court—*

however, the Court does not give reasons for being satisfied that the presence of the plaintiff is necessary, *it does not follow that the defendants had failed* to satisfy the Court that there was sufficient ground for the application MAKOOND ADIT *v* SUTTOOGUN ADIT . . . . 17 W. R., 507

19. ———— Application to summon witnesses—*Witnesses declared unnecessary by*

JEWUN SINGH *v* RADHA PERSHAD SINGH

[16 W. R., 109

20. ———— *Undertaking to bring witnesses—Practice.*—On the 12th October 1879 the plaintiff applied to the Court for subpœnas to

failure to bring his witnesses was no sufficient reason for depriving him (the plaintiff) of his right to have subpœnas issued, if he found himself unable to bring his witnesses or to detain them till they could be examined, although it might possibly be, under certain circumstances, a reason for not waiting for them, if the

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

plaintiff's case had been in other respects finished before they could be examined. PANDURANG ANPAI *v.* KESHAVJI JADHAVJI . I. L. R., 6 Bom., 742

21. ——— **Time for summoning witnesses** — *Duty of Court*.—The Civil Procedure Code neither expressly nor impliedly declares that witnesses must be summoned before the day fixed for the first hearing of the suit. So long as the hearing merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is bound to summon them, unless it appears that the application is made so late that the witnesses cannot be reasonably expected to attend in time to be examined before that party's case closes. INDRO CHUNDER BABOO *v.* DUNLOP 9 W. R., 530

22. ——— **Ground for refusal to summon witnesses**—*Obligation of Court to assist party—Delay in giving names of intended witnesses.*—Where an appellant delayed to give in the names of his witnesses, but would yet have been within rea-

summonses, and to have given every assistance to the party asking for them, all additional expenses being paid by such party. PEAREE MOHUN MOOKERJEE *v.* MADHUB CHUNDER GHOSAL . . 9 W. R., 489

23. ——— ——— *Omission of proper steps to obtain attendance of witnesses.*—Where some of the witnesses (defendants) in a suit had been examined, and plaintiff petitioned the Court to have the remaining defendants examined as witnesses, he was held not to have taken the necessary steps required by law to enforce their attendance, because he did not make any special application to the Court, or show sufficient grounds in support of his petition. RAM TUHUL THAKOOR *v.* OODIT NARAIN SINGH . . . . 12 W. R., 36

24. ——— *Procedure under Dekkan Agriculturists' Act (XVII of 1879), s. 7—Right of defendant to call witnesses.*—The plaintiff sued, under s. 3, cl. (w), of Act XVII of 1879, for money due on a bond dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court therefore proceeded with it *ex-parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part payment of the plain-

duty to summon the witnesses named by the defendant. DULICHAND *v.* DHONDI

[I. L. R., 5 Bom., 184

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

25. ——— *Civil Procedure Code, 1877, s. 137—Summons to produce documents*—In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons

termination of the trial. KRISHNA CHURN BAISACK *v.* PROTAB CHUNDER SURMA

[I. L. R., 7 Calc., 560

26. ——— **Adjournment for attendance of witnesses** — *Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal.*—On the day fixed for the hearing

was refused and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants, the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be deli-

to that arrived at by the Chief Justice. MONI LAL BANDOPADHYA *v.* KHIRODA DASI

[I. L. R., 20 Calc., 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY

[I. L. R., 20 Calc., 745 note

27. ——— *Civil Procedure Code (1882), s. 159—Application to summon witnesses—Duty of Court in respect of such application.*—Where a person making an application to a

order the summons asked for to issue, as the Court is

Alarakh Pirbhai, I. L. R., 15 Bom., 66, approved. BHAGWAT DAS *v.* DEBI DIN I. L. R., 16 All., 318

WITNESS—CIVIL CASES—*continued*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

28. ——— **Ground for adjournment of suit**— *Delay in making application to summon* [illegible]

under the Procedure Code to issue summonses to witnesses when asked for. ABDOOL KADIR *v.* ABIN MIRDHA . . 24 W. R., 290

29. ——— *Civil Procedure Code, 1882, ss. 159 and 167—Summoning witnesses—Delay in serving summonses.*—Under s. 159 of the Code of Civil Procedure (Act XIV of 1882), parties are entitled to summonses for their witnesses at any time before the final hearing, but if there has been delay and want of diligence in consequence of which [illegible]

30. ——— **Power to dismiss suit**—*Dismissal of suit on ground of there not being time after filing of list to summon witnesses—Civil Procedure Code, 1859, s. 149, 1877, s. 159.*—The 20th of March 1877 having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and the defendant on the 19th filed their list of witnesses to be summoned. Both lists were ordered merely to be [illegible]

impossible to secure the attendance of the witnesses had the summonses been granted on the 17th instant. S. 149 of Act VIII of 1859, and s. 159 of Act X of 1877, discussed. RAJENDRO NARAIN NEOGI *v.* KUMUD NARAIN BHUP 3 C. L. R., 569

31. ——— **Issue of fresh subpœnas to witnesses**— *Re-hearing of ex-parte case under s. 119, Civil Procedure Code, 1859—Quære*—Where, either under s. 119, Code of Civil Procedure, or in the exercise of a power of review, a suit is restored to its original position, is the plaintiff bound to obtain and issue fresh subpœnas? BISHEN PERKASH SINGH *v.* RUTTUN GEER CHELA 20 W. R., 3

32. ——— **Service of subpœnas**— *Liability for non-service.*—After a list of witnesses has been filed and the tulubana paid, the Court's officers, not the applicant, are responsible for the service and return of notice. MUSSITEE KHANUM *v.* HOOKOOM BIBEE . . . 15 W. R., 88

33. ——— **Form of summons**—*Omission to state place of attendance*—A summons should state the place of attendance. ANONYMOUS [7 Mad., Ap., 14

ANONYMOUS . . . 7 Mad., Ap., 43

See s. 163, Civil Procedure Code, 1882.

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*concluded.*

34. ——— **Summoning public officer as a witness.**—In fixing the time for the attendance of a public officer as a witness, or in granting an adjournment for that purpose, the fullest consideration must be given to the exigencies of the public duties of the officer summoned. ANONYMOUS [6 Mad., Ap., 6

35. ——— **Issue of warrant on non-attendance of witness**—*Warrant of arrest for witnesses not attending—Verbal order to attend.*—A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. VENKATAPPAH *v.* PAPAMMAH . . . . 5 Mad., 132

ANONYMOUS . . . 6 Mad., Ap., 10

See, however, ANONYMOUS 5 Mad., Ap., 15

3. EXPENSES OF WITNESSES

36. ——— **Right to be paid expenses**—*Omission to apply for expenses before giving evidence.*—A witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* MAHOMED IBRAHIM PARKAR . I. L. R., 4 Bom., 619

37. ——— ——— *Suitable expenses—Persons of rank and wealth.*—People of rank and wealth, when summoned as witnesses to a distance from their place of residence, are entitled to travelling and other expenses suitable to their circumstances. CHUNDER SEKHUR DEB *v.* JADUB CHUNDER SETT [19 W. R., 78

38. ——— **Payment of expenses into Court**—*Civil Procedure Code, 1859, s. 151.*—Under s. 151, Act VIII of 1859 (extended to Revenue Courts by s. 67, Act X of 1859), the defendant was not bound to pay into Court the costs of summoning and defraying the expenses of the witnesses, until the Court had fixed what was reasonable. MOHUN MUNDUR *v.* BRIJ BHOOKUN SINGH 9 W. R., 128

39. ——— **Power to order evidence to be taken**—*Omission to tender expenses—Evidence of tender of expenses.*—Where there was no proof that a defaulting witness's expenses were tendered to him by the party at whose instance he was summoned, the Court on appeal declined to order that witness's evidence to be taken or to take it itself. ISHEN CHUNDER SEN *v.* ONATH NATH DEB. COWELL *v.* ISHEN CHUNDER SEN 18 W. R., 16

40. ——— **Amount of expenses**—*Compensation for loss of time.*—Act VIII of 1859 made no provision for compensation to witnesses for loss of time. NAWAB NAZIM OF BENGAL *v.* PROSONO NARAIN DEB . . . . 2 Hyde, 236

WITNESS—CIVIL CASES—*continued.*

3. EXPENSES OF WITNESSES—*concluded.*

41. ———— Provision for expenses—*Suit for expenses—Cause of action*—No action for the expenses of a witness will lie. Explanation of the manner of providing for the payment of such expenses. DE SARAN *v.* HURRISH CHUNDER BISWAS [5 W. R., S. C. C. Ref., 6

4. DEFAULTING WITNESSES.

42. ———— Non-attendance of witnesses on summons—*Duty of parties—Commission.*—When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance, and when a commission is issued for the examination of witnesses, the Court must be moved to wait for the return. NUND MOHUN CHOWDHRY *v.* GOLUCK NATH NEOGEE . . . 11 W. R., 99

43. ———— *Duty of parties—Issue of attachment—Civil Procedure Code, 1859, s. 168.*—Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed, *suo motu*, to further the production of the witnesses, though the Court may issue attachment under s. 168, Code of Civil Procedure, if it is shown that the witnesses are absconding or keeping out of the way. BACHMAN *v.* LAIL BEHAREE PANDEY 13 W. R., 324

44. ———— *Civil Procedure Code (1882), s. 174—Non-attendance of witness in obedience to a summons—Warrant of arrest—Non-payment of expenses in accordance with s 160, Civil Procedure Code.*—There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed to attend, when it is shown to the Court that the absence of such witness is due to the non-payment or non-tender, by the person at whose instance the summons had been issued, of the necessary expenses of such witness as specified in s 160 of the Code of Civil Procedure TODAR MAL *v.* SAID MUHAMMAD [I. L. R., 17 All., 277

45. ———— Order for arrest of witness—*Civil Procedure Code, 1859, s. 168—Proceedings against witnesses absent who have been summoned.*—Where a lower Appellate Court, by the terms of its order on a petition for the apprehension of witnesses, under s. 168, Code of Civil Procedure, undertook to see that proper orders should be passed, it was bound to pass such orders as might, in its judicial discretion, be necessary under that section. MOHADEB SHAHA *v.* SHEO SUNOY GEER [9 W. R., 359

46. ———— *Witness making default in appearing—Civil Procedure Code, 1859 s. 168—Ground for issue of warrant.*—S 168, of the Civil Procedure Code [illegible]

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

before issuing a warrant for the arrest of such witnesses. But it was not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced PERIYANNA CHETTY *v.* GOVINDA GOUNDEN . 5 Mad., 104

47. ———— Issue of proclamation against absent witness—*Materiality of evidence—Ground for non-attendance.*—A Court was held to be not bound to issue a proclamation against absent witnesses in a case where it was not satisfied that the witnesses were material, or that they had really absconded to avoid attendance. BHOOBUN MOYEE DOSSEE *v.* KISHOREE DOSSEE [6 W. R., 235

48. ———— Application for process [illegible]

would be inequitable to grant it. RAJOO SINGH *v.* LALLA BALGOBIND LAL . . 1 W. R., 26

49. ———— Notice of proclamation—*Civil Procedure Code, 1859, ss. 159 and 168—Service* [illegible]

personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt, under s 174 of the Penal Code and s 168 of the Code of Criminal Procedure, was quashed. QUEEN *v.* HURYNATH CHOWDHRY . 7 W. R., Cr., 58

50. ———— Discretion of Court as to issue of proclamation—*Proclamation against absent witness—Civil Procedure Code, 1859, s. 159.*—S 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and [illegible] Court is [illegible] PORAN [illegible] R., 505

51. ———— *Ground for issue* [illegible] *Civil Procedure Code, 1859, s. 159* [illegible] lama- [illegible] de of [illegible] isfac- [illegible] terial, [illegible] after [illegible]

CHATTERJEE [illegible]

52. ———— Production of document—*Civil Procedure Code, 1882, s. 174—Court's juris-*

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

diction to punish a witness for refusing to produce a document—Procedure—Penal Code (Act XLV of 1860), s. 175—Criminal Procedure Code (Act X of 1882), s. 480.—A witness was summoned to produce a document in Court in connection with a certain suit. He attended the Court, but did not produce the document, stating on oath that it was not in his possession. But this statement was disbelieved, and

the Court. The case of a witness who having a document will not produce it is provided for by s. 175 of the Penal Code and s. 480 of the Code of Criminal Procedure. IN RE PREMCHAND DOWLATRAM . . . . I. L. R., 12 Bom., 63

53. ——— Service of subpœna—*Civil Procedure Code (Act XIV of 1882), ss. 80, 174—Failure to attend—Fine.*—S. 174 of the Code of

of the service of a summons upon a witness was in these terms: "The remaining witness No. 1 being in

when he says he knew where the witness was, is not sufficient *per se* to warrant the peon in affixing a

witness was served as above and he applied for a time to appear,—*Held* that the fact of his

CHOWDHURI *v.* BAJOO . 3 C. W. N., 307

54. ——— Ground for postponement of case—*Application for process against absent witness made at late stage of case—Civil Procedure Code, 1859, s. 159.*—Where an application was made at a very late stage of a case to enforce the provisions of s. 159 of the Code of Civil Procedure, without proffer of any proof that the witness was absconding or keeping out of the way for the purpose of avoiding the service of the summons the lower Appellate Court was held to have been justified in not postponing the case to secure the attendance of the witness, although material. AJOODHYA DOSS *v.* MISRUN . . . 15 W. R., 176

55. ——— Fine for avoiding service of summons—*Act XIX of 1853, s. 25—Act X of*

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*concluded.*

1861.—S. 28 of Act XIX of 1853 having been

[1 B. L. R., A. C., 186

GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . . 10 W. R., 233

5. SWEARING OR AFFIRMATION OF WITNESSES.

56. ——— Objection to take oath—*Member of Church of England—Stat. 17 and 18 Vict., c. 125.*—A member of the Church of Eng-

v. SOWERBY . . . 2 Mad., 246

57. ——— Where a Mahomedan witness stated that he had no objection to oaths in general, but that he was suffering from

58. ——— Refusal to examine witnesses—*Dismissal of suit by first Court without examining defendant's witnesses—Reversal of decree on appeal—Duty of Appellate Court to direct exami-*

who were examined, allowed the plaintiff's appeal, —*Held* that, before doing so, the lower Appellate Court should have afforded the defendants an opportunity of supplementing the evidence which they had given in the first Court by the testimony of those witnesses whom that Court had declared it unnecessary to hear, and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants. The Court directed the first Court to examine the

[I. L. R., 9 All., 339

6. EXAMINATION OF WITNESSES.

(a) GENERALLY.

59. ——— Selection of witness—*Duty of parties.*—It is not the business of a Court to determine what witnesses shall be examined. The parties must select their own witnesses, and call upon

WITNESS—CIVIL CASES—*continued.*

3. EXPENSES OF WITNESSES—*concluded.*

41. ———— **Provision for expenses**—*Suit for expenses—Cause of action.*—No action for the expenses of a witness will lie. Explanation of the manner of providing for the payment of such expenses. DE SARAN *v.* HURRISH CHUNDER BISWAS [5 W. R., S. C. C. Ref., 6

4 DEFAULTING WITNESSES.

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43. ———————— *Duty of parties — Issue of attachment — Civil Procedure Code, 1859, s. 168.*—Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed, *suo motu*, to further the production of the witnesses, though the Court may issue attachment under s 168, Code of Civil Procedure, if it is shown that the witnesses are absconding or keeping out of the way. BACHMAN *v.* LALL BEHAREE PANDEY . 13 W. R , 324

44. ———————— *Civil Procedure Code (1882), s. 174—Non-attendance of witness in obedience to a summons—Warrant of arrest—Non-payment of expenses in accordance with s 160, Civil Procedure Code.*—There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed to attend, when it is shown to the Court that the absence of such witness is due to the non-payment or non-tender, by the person at whose instance the summons had been issued, of the necessary expenses of such witness as specified in s. 160 of the Code of Civil Procedure TODAR MAL *v.* SAID MUHAMMAD [I. L. R, 17 All , 277

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46. — — *Witness making default in appearing—Civil Procedure Code, 1859 s. 168—Ground for issue of warrant* – S. 168, of ...

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

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47. ———— **Issue of proclamation against absent witness**—*Materiality of evidence—Ground for non-attendance.*—A Court was held to be not bound to issue a proclamation against absent witnesses in a case where it was not satisfied that the witnesses were material, or that they had really absconded to avoid attendance. BHOOBUN MOYEE DOSSEE *v.* KISHOREE DOSSEE [6 W. R., 235

48. — — Application for process ...

would be inequitable to grant it. RAJOO SINGH *v.* LALLA BALGOBIND LAL . . 1 W. R., 23

49. ———— **Notice of proclamation**—*Civil Procedure Code, 1859, ss. 159 and 168—Service of proclamation.*—The proclamation issuable under s 159, Act VIII of 1859, could not be legally affixed ... Before

s 174 of the Penal Code and s 168 of the Code of Criminal Procedure, was quashed. QUEEN *v.* HURYNATH CHOWDHRY . 7 W. R., Cr., 58

50. ———— **Discretion of Court as to issue of proclamation**—*Proclamation against absent witness—Civil Procedure Code, 1859, s. 159.*—S 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and ...

51. ———————— *Ground for issue ... Civil Procedure Code, 1859, s. 159*

these circumstances have been shown, it was a matter of discretion to issue the proclamation and attachment, and after issue to let the case stand over. KALEE DASS CHUCKERBUTTY *v.* ESHAN CHUNDER CHATTERJEE . . . 13 W. R., 416

52. ———— **Production of document**—*Civil Procedure Code, 1882, s. 174—Court's juris-*

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

diction to punish a witness for refusing to produce a document—Procedure—Penal Code (Act XLV of

ment, stating on oath that it was not in his possession. But this statement was disbelieved, and

Criminal Procedure. IN RE PREMCHAND DOWLATRAM . . . . I. L. R., 12 Bom., 63

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of the service of a summons upon a witness was in these terms: 'The remaining witness No. 1 being in Calcutta, the copy of summons in his name has been hung upon the u at wall of the cutchery house of the defendant's residence,—*Held* that the circumstance that the peon could not find the witness when he says he knew where the witness was, is not sufficient *per se* to warrant the peon in affixing a copy of the summons to the house of the witness, so as to constitute good substituted service under s. 80, Civil Procedure Code That under s 174, Civil Procedure Code, a witness who has failed to appear on his summons can only be fined after he has been arrested and brought before the Court Where a witness was served as above and he applied for a time to appear,—*Held* that the fact of his

CHOWDHURI *v.* BAJOO 3 C. W. N., 307

54 ——— Ground for postponement of case—*Application for process against absent*

ding or keeping out of the way for the purpose of avoiding the service of the summons the lower Appellate Court was held to have been justified in not postponing the case to secure the attendance of the witness, although material. AJOODHYA DOSS *v.* MISRUN . . . 15 W. R., 176

55. ——— Fine for avoiding service of summons—*Act XIX of 1853, s. 28—Act X of*

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*concluded.*

1861.—S. 28 of Act XIX of 1853 having been

[I. B. L. R., A. C., 100

GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . . 10 W. R., 233

5. SWEARING OR AFFIRMATION OF WITNESSES.

56. ——— Objection to take oath—*Member of Church of England—Stat 17 and 18 Vict., c. 125*—A member of the Church of Eng-

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57 ——— Where a Mahomedan witness stated that he had no objection to oaths in general, but that he was suffering from a disease which disqualified him from taking an oath on the Koran until purification,—*Held* that the witness must be sworn in the regular way or not at all ANONYMOUS . 1 Mad., 99 note

58. ——— Refusal to examine witnesses—*Dismissal of suit by first Court without examining defendant's witnesses—Reversal of decree on appeal—Duty of Appellate Court to direct examination of witnesses before reversing decree.*—Where a Court of first instance considering it unnecessary to examine certain witnesses for the defence, dismissed the suit, and the lower Appellate Court, disbelieving the evidence of those witnesses for the defence who were examined, allowed the plaintiff's appeal,—*Held* that, before doing so, the lower Appellate Court should have afforded the defendants an opportunity of supplementing the evidence which they had given in the first Court by the testimony of those witnesses whom that Court had declared it unnecessary to hear, and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants. The Court directed the first Court to examine the

[I. L. R., 9 All., 339

6. EXAMINATION OF WITNESSES

(a) GENERALLY.

59 ——— Selection of witness—*Duty of parties.*—It is not the business of a Court to determine what witnesses shall be examined The parties must select their own witnesses, and call upon

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*continued.*

should not be examined.—*Held* that defendant should not have been bound solely and absolutely by the plaintiff's deposition, but that the other evidence on the record should also have been considered JUGDEO SINGH *v.* MOLAZIM HOSSEIN . 13 W. R., 108

(*b*) CROSS-EXAMINATION.

80. ——— Right to cross-examine—*Witness called by the Court.*—A witness called by the Court is liable to be cross-examined by any of the parties to a suit. TARINI CHARAN CHOWDHRY *v.* SARODA SUNDARI DASI

[3 B. L. R., A. C., 145 : 11 W. R., 468

81. ——— *Witness called by Court*—A party summoned by the Court to give evidence is not only required to give answers to the questions put to him by the Court, but the opposite

SHURFURAZ MOLLAH *v.* DHUNOO 16 W. R., 257

82. ——— *Co-defendant separately represented.*—One co-defendant, whose interests are separately represented, may cross-examine another. NARASIMMA *v.* KISTNAMA 1 Mad., 456

83 ——— *Recall of witnesses—Omission to give opportunity for cross-examination.*—A Court of first instance decreed a

[3 B. L. R., A. C., 215 : 12 W. R., 130

84. ——— *Refusal to allow cross examination—Act VIII of 1859, s 170.*—A defendant failed to appear when ordered to attend under s. 170, Act VIII of 1859. The Judge did not at once pass judgment against him, but called the plaintiff's witnesses, and refused to allow the defendant's vakil, who was present, to cross-examine them. *Held* that the Judge ought to have allowed the defendant's vakil to cross examine the plaintiff's witnesses PARAKTAR *v.* JAKRIRAM BHAKAT

[2 B. L. R., Ap., 12

85. ——— Refusal of witness to answer questions on cross examination—*Civil Procedure Code, 1859, s 169—"Lawful excuse."*—A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put on cross examination, was liable to be dealt with under s. 169 of the Civil Procedure Code. "Without lawful excuse" means such an excuse as would in law justify the refusal to give evidence. LEKH RAJ *v.* PALEE RAM

[1 N. W., 162 : Ed. 1873, 241

86. ——— Cross-examination to credit—*Opinion formed as to credit of witness by another Judge in another case inadmissible.*—Evidence of

7. CONSIDERATION AND WEIGHT OF EVIDENCE.

87. ——— Credibility of witnesses—*Power to set aside decision on evidence.*—The credibility of witnesses is a matter altogether for the

appeal, even though upon a general view of the case it should think that, if it had tried the case originally, it might have come to a different conclusion. GOUREE PERSHAD KOONDOO *v.* PRANNATH SURMAH

[10 W. R., 365

88. ——— *Mode of testing credibility—Several witnesses to same facts.*—In examining evidence with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they substantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. NANA NARAIN RAO *v.* HAREEE PUNTH BHAO

[Marsh., 438 : 9 Moore's I. A., 96

89 ——— *Witnesses called*

necessary to establish its truth FUZEELUN BEEBEE *v.* OMDAH BEEBEE . . 10 W. R., 469

90. ——— *Credit on other matters of witnesses supporting a false case.*—Although it does not necessarily follow that where a

merely giving an opinion upon an isolated fact in the case, but came into Court to prove the whole case made by the plaintiffs, and that a very special case,

WITNESS—CIVIL CASES—*continued.*

7. CONSIDERATION AND WEIGHT OF EVIDENCE—*continued.*

and it is shown to be a case false in its material features, much reliance cannot be placed on their evidence as to any particular questions in the case. HABEEBOOLLAH *v.* GOHUR ALLY KHAN [18 W. R., P. C., 523

91. ———— Ground for refusal to con- [illegible]

LATORE MISTREE *v.* AGAMUDDEE NUSHYO [14 W. R., 482

92. ———— Mode of weighing evidence —*Consideration of motives for bringing a suit.*—Where the evidence in support of a case is doubtful, the Court, in weighing that evidence, may properly take into consideration the motives imputed to the plaintiff as having induced him to sue. BIRCH *v.* FURZIND ALI . 3 N. W., 303

93.———— Estimating value of evidence —*Witness swearing affirmatively to fact.*—In estimating the value of evidence, the testimony of a person who swears positively that a certain conversation took place, is of more value than that of one who says that it did not. CHOWDHRY DEBY PERSAD *v.* CHOWDHRY DOWLUT SINGH [6 W. R., P. C., 55: 3 Moore's I. A., 347

94. ———— *Credit of witness, a servant or dependant of plaintiff.*—The circumstance of a witness being a servant or a dependant of the plaintiff does not of itself disentitle him to credit. SHOOBUL CHUNDER KULLEAH *v.* KOYLASH CHUNDER MAL . . 14 W. R., 23

95. ———— *Rejection of evidence unnecessarily and unjustifiably.*—*Held* by NORMAN, *J.*, that the Judge was not at liberty to reject, as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts which they related, and that the probative force arising from concurrent testimony was the compound ratio of the probabilities of the testimonies taken singly. RADHA KANT DEB *v.* KHEMA DOSSEE . . 7 W. R., 105

96. ———— *Evidence of witnesses found unreliable in criminal case.*—A Judge was held to have done wrong in throwing out the evidence of witnesses tendered by the defendant in a civil action, merely because they have been found untrustworthy when examined with reference to a charge of breach of trust against the same defendant in a criminal case. LALL CHAND ROY *v.* BRINDABUN CHUNDER ROY . . . 13 W. R., 226

97. ———— *Evidence, Weight of—Witness, Evidence of, part of which is disbelieved, value of.*—If a part of the evidence of a witness is disbelieved, other evidence coming from the [illegible]

98. ———— *Evidence of person who has been convicted of perjury or other offence.*—The evidence of a person who has been punished for perjury or of a person who has been convicted of a criminal offence can hardly be entitled to the credit that would be given to the testimony of a person against whom no such imputation can be brought. DOONGUN RAI *v.* DOORGA RAI . 2 N. W., 97

99. ———— *Evidence of truth of witness.*—The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned, for, if he was possessed of common shrewdness, he would not have overdone the thing and then have given rise to such an objection. SOORIAH ROW *v.* COTAGHERY BOOCHIAH [5 W. R., P. C., 127: 2 Moore's I. A., 113

100. ———— *Credibility of witnesses—Professional witness—Witnesses in former cases.*—The Privy Council, referring to the [illegible]

increase the indisposition of respectable persons to come into Court as witnesses, which was one of the social evils of India. LALL BEHAREE LALL *v.* GOPEE BEEBEE . 18 W. R., P. C., 285

101. ———— *Discrepancies in statements of witnesses.*—Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. BHAJU SING *v.* KAIFNATH TEWARI . . . 3 B. L. R., A. C., 332

102. ———— *Ground for discrediting witness.*—A bare allegation by a defendant in his written statement, without any proof in support of it, that a certain person is his inveterate enemy, is not sufficient to discredit that person's testimony. KASINATH SHAHA *v.* DWARKANATH SIRKAR [9 B. L. R., 215: 17 W. R., 550

8. PRIVILEGES OF WITNESSES

103. ———— Exemption from appearance in Court—*Natives of rank, Prejudices of, to appear in Court.*—The prejudices of natives of rank to appear as witnesses in a Court of justice will not be [illegible]

WITNESS—CRIMINAL CASES —*continued.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*continued.*

fully complied with, summoned the committing Magistrate and took his evidence that the accused person duly made the statement recorded. The [illegible]

PEARSON, J., OLDFIELD, J., and STRAIGHT, J.—That the privilege given by s. 121 of Act I of 1872 is the privilege of the witness, *i.e.*, of the Judge or Magistrate of whom the question is asked, if he waives such privilege, or does not object to answer such question, it does not lie in the mouth of any other person to assert the privilege: the reference, [illegible]

[I. L. R., [illegible] All., [illegible]]

3. ——— *Judge trying case —Magistrate witness of facts.*—In a case in which [illegible] cross-examine the Judge [illegible]

[illegible] W. R., Cr., 70

4. ——— *Conviction, Illegality of*—[illegible] in a case ir[illegible] fact. *Per* [illegible] has given h[illegible]

5. ——— *Magistrate sitting on Bench in Appellate Court—Liability to be examined as witness*—It is undesirable that Magistrates, whose decisions are under appeal, or who have been engaged in promoting the prosecution as police officers concerned in a case, should sit on the Bench beside or converse privately in Court with the Judge who is engaged in trying the prisoner's appeal. If the Appellate Court wishes *to ascertain any facts* relating to the case from the Magistrate who convicted the accused [illegible]

6. ——— *Examination of Magistrate trying case.*—Case in which the High [illegible]

See S. 121 OF THE EVIDENCE ACT, 1872.

7. ——— Prisoner—*Tendering pardon to prisoner.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. QUEEN *v.* GAGALU

[6 B. L. R., Ap., 50: 12 W. R., Cr., 60

8. ——— *Co-defendants, Examination of, as witnesses.*—Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants. QUEEN *v.* ASHRUFF SHEIK . . . 6 W. R., Cr., 91

9. ——— *Prisoners tried together jointly—Examination of one as witness against another.*—Where two prisoners are tried [illegible]

10. ——— Person brought up with [illegible]

11. ——— Evidence of woman on charge of adultery.—A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. IN RE BECHOO . . . . 6 W. R., Cr., 93

12. ——— Person against whom affiliation order is sought—*Criminal Procedure Code (1882), s. 488—Order for maintenance*—A person against whom an order for maintenance under s. 488 of the Code of Criminal Procedure is sought is a competent witness on his own behalf in such proceedings. HIRA LAL *v.* SAHEB JAN

[I. L. R., 18 All., 107

See NUR MAHOMED *v.* BISMULLA JAN

[I. L. R., 16 Calc., 781

13. ——— *Evidence Act, s. 118—Competency of persons of tender years*—The competency of a person to testify as a witness is a condition precedent to the administration to him,

WITNESS—CRIMINAL CASES —*continued.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*concluded.*

of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency, the Court, under s 118 of the Evidence

If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. QUEEN-EMPRESS *v.* LAL SAHAI . . . I. L. R., 11 All., 183

14. ———— *Evidence Act (I of 1872), s. 118—Evidence of a witness illegally pardoned by the police—Meaning of "accused" in s. 342 of the Code of Criminal Procedure (Act X of 1882).*—During the course of a police investigation into a case of house-breaking and theft,

15. ———— *Accused persons under trial separately for a substantive offence*

convicted, but was sent to a Magistrate of higher

2. SUMMONING WITNESSES.

16. ———— Dispensing with personal attendance of witnesses—*Deposition—Trial before Sessions Court* – It is only in extreme cases of delay or expense that the personal attendance of a

WITNESS—CRIMINAL CASES —*continued.*

2 SUMMONING WITNESSES—*continued.*

witness before the Court of Session should be dispensed with, and the evidence given by him before the committing Magistrate referred to. EMPRESS *v.* MULU . . . I. L. R., 2 All., 646

17. ———— Application to enforce attendance of witnesses—*Witnesses for defence—Examination of accused.*—In a case under Ch. XV, Code of Criminal Procedure, 1861, it was incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who was not likely to appear without a summons; it was not necessary in

14 W. R., Cr., 16

18. ———— Discharge of witness from

19. ———— Discretion of Court as to summoning witnesses—*Criminal Procedure Code, 1872, s. 192—Discretion of Magistrate as to examining witnesses.*—It is entirely within the discretion of a Magistrate conducting a trial in a

QUEEN *v.* KASSY SINGH QUEEN *v.* HULKORER SINGH . . . 21 W. R., Cr., 61

20. ———— Duty of Court as to summoning witnesses—*Criminal Procedure Code, 1872, s. 359—Adjournment for appearance of witnesses for defence.*—Certain persons were charged before the Magistrate with rioting, and being called upon for their defence, named several witnesses, and

J., that this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might

persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued.*

material; but that the section is not intended to

SINGH . . . . I. L. R., 3 Calc., 573

S. C. IN THE MATTER OF THE PETITION OF RAJCOOMAR SINGH . . . . 2 C. L. R., 62

21. ——— *Obligation to summon witnesses—Criminal Procedure Code, 1861, Ch. XIV.*—In a case tried under the provisions of Ch. XIV of the Code of Criminal Procedure, the accused were entitled to have their witnesses summoned, and a Magistrate had no power to refuse to summon them. QUEEN *v.* DOORGAGUTTY [11 W. R., Cr., 55

22. ——— *Discretion of Magistrate—Criminal Procedure Code, 1861, s. 262.* —*Held* by BAYLEY, J. (MARKBY, J., *dubitante*), that a Magistrate had a discretion, under s. 262 of the Code of Criminal Procedure, to summon a witness when he was likely to give material evidence on behalf of the accused. IN THE MATTER OF THE PETITION OF AMEER CHAND NOHATTA. QUEEN *v.* AMEER CHAND NOHATTA . 13 W. R., Cr., 63

23. ——— *Forcibly rescuing*

24. ——— *Duty of parties —Criminal Procedure Code, 1861, ss. 261, 262— Attendance of witnesses.*—In a case under Ch. XV of the Code of Criminal Procedure, it was ex-

judg-
nswer.

[10 W. R., Cr., 16

25.——— *Criminal Procedure Code, 1861, s. 186.*—In the case of a charge of an offence triable by the Court of Session alone, the Magistrate was bound, under s. 186 of the Criminal Procedure Code, to summon the complainant's witnesses. QUEEN *v.* ZAKIR ALLY . 8 W. R., Cr., 4

26.——— *Criminal Procedure Code, 1861, s. 375—Accused person, Right of* —An accused person is entitled to have examined as a witness any person named in his list of witnesses delivered to the Magistrate; and the Magistrate *should take measures to enforce the attendance of* such person. QUEEN *v.* ISHAN DUTT [6 B. L. R., Ap., 88 : 15 W. R., Cr., 34

27.——— *Right of accused*

will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-Empress* v. *Har Gobind Singh, I. L. R., 14 All., 242,* referred to QUEEN-EMPRESS *v.* SHAKIR ALI . . . . I. L. R., 19 All., 502

28.——— *Criminal Procedure Code (Act XXV of 1861), ss. 188, 207, 227, and 228—Arrest and detention of witnesses.*— S. 207 of the Criminal Procedure Code gave no power

Court of Session. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR [4 B. L. R., Ap., 1 : 13 W. R., Cr., 1

29. ——— *Credibility of witnesses.*—*It is the Magistrate's duty to summon* witnesses for the accused who can speak to the facts

30. ——— *Criminal Procedure Code, 1861, ss. 186, 262.*—S. 186 of the Code of Criminal Procedure referred to cases under Ch. XII, which were triable by the Court of Session, and not to cases under Ch. XV, which were triable by a Magistrate. To the latter cases s. 262 applied. BOIDDONATH BANIA *v.* BHEEDOO DOSS [9 W. R., Cr., 3

31. ——— *Right of accused to have witnesses summoned—Criminal Procedure Code, 1872, s. 363.*—Under s. 363, Code of Criminal Procedure, a prisoner was entitled, as a matter of right, to have any witnesses named in the list which

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued.*

he delivered to the Magistrate, summoned and examined. QUEEN *v.* PROSUNNO COOMAR MOITRO [23 W. R., Cr., 56

32. ——— *Criminal Procedure Code, 1861, s. 253.*—Under s 253 of the Criminal Procedure Code, 1861, it was imperative on the Magistrate to summon the witnesses named by the prisoner. QUEEN *v.* MUDSOODDEEN 2 N. W., 148

33. ——— *Summoning witnesses for accused—Criminal Procedure Code (Act XXV of 1861), s. 253.—Per* AINSLIE, *J.*—In a trial under Ch XIV of the Criminal Procedure Code, the Magistrate was not bound, under s. 253, to summon any witness whom the accused might require. It was only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for *Per* PAUL, *J.* (differing) —The right of an accused to have wit- [illegible]

BHOLANATH MOOKERJEE [7 B. L. R, 564: 16 W. R., Cr, 28

34. ——— *Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 253, 262, 263.*—S. 253 of the Criminal Procedure Code did not apply to cases triable under Ch. XV of that Code; and ss. 262 and 263 were applicable when the offence was not punishable with more than six months' imprisonment, and it was in the discretion of the Magistrate to summon the witnesses for the defence, if he considered their evidence [illegible]

35. ——— *Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 227, 228.*—Where a prisoner, under s. 227, Code [illegible]

36. ——— *Discretion of Magistrate—Criminal Procedure Code, 1872, ss. 215, 362.*—It was not incumbent on a Magistrate

WITNESS—CRIMINAL CASES —*continued.*

2 SUMMONING WITNESSES—*continued.*

to summon every person named as a witness by the complaint S. 215, expl 3, of the Criminal Procedure Code, 1872, must be read with s. 362, which vested a discretionary power in the Magistrate. JELDHARI SINGH *v.* SHUNKUR DOYAL [23 W. R., Cr, 9

See, however, EMPRESS *v.* HEMATULLA [I. L. R., 3 Calc, 389

EMPRESS OF INDIA *v.* KASHI [I. L. R., 2 All., 447

QUEEN *v.* PURASURAMA NAIKAR [I. L. R., 4 Mad., 329

ANONYMOUS . . . 8 Mad., Ap., 5

37. ——— *Criminal Procedure Code, 1861, Ch XIV.*—In a case of an offence (such as hurt, under s 323, Penal Code) [illegible] six months of the Code as bound to the accused. QUEEN *v.* BOOLAKEE . 14 W. R., Cr., 81

38. ——— *Criminal Procedure Code, 1869, s. 131—Claims to stolen property.*—Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimants to come in and claim the property, no one appeared, whereupon petitioner preferred his claim and asked the [illegible]

aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question. SOOKHAN SAHOO *v* GOVERNMENT . . 18 W. R., Cr., 5

39. ——— *Issue of summons—Criminal Procedure Code (Act XXV of 1861), s. 318*—Although there was no mention in Ch. XXII of Act XXV of 1861 of any particular provisions under which witnesses might be summoned, yet it was the duty of the Court, if parties could not procure the attendance of their witness, to issue summonses for their attendance IN THE MATTER OF THE PETITION OF SHAMASANKAR MAZUMDAR [9 B. L. R., Ap, 45

SHAMASUNKUR MOZOOMDAR *v.* ANUNDMOYEE DASSYA . . . . 18 W. R., Cr., 64

40. ——— *Ground for postponement of case*—A Magistrate was held to be right, under the circumstances, in not postponing the case for the purpose of summoning witnesses for one of the parties. IN THE MATTER OF THE PETITION OF GAVINDA CHANDRA GHOSE . 9 B. L. R., Ap., 39

41. ——— *Non-attendance of witnesses—Criminal Procedure Code, 1861, s. 263—Ground for adjournment of trial.*—In a trial held

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued*

under Ch. XV of the Criminal Procedure Code, it was not an irregularity to adjourn the trial, under s 269, for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial QUEEN *v.* DINOO ROY [16 W. R., Cr., 21

42. ——— *Refusal of a Magistrate to summon prisoner's witnesses—Criminal Procedure Code (Act X of 1872), s 359.*—A Magistrate was not at liberty to refuse to summon a witness tendered by an accused person, except on the grounds specified in s. 359 of the Criminal Procedure Code; and if he did refuse, he was bound to proceed under that section. The fact that the accused declines to examine a witness is no reason for refusing to summon him to meet fresh evidence given subsequent to the defence being closed. IN THE MATTER OF THE PETITION OF DEELA MAHTON *v* SHEO DYAL KOERI . I. L. R., 6 Calc., 714

S. C. IN THE MATTER OF DEELA MAHTON [8 C. L. R., 70

43. ——— *Criminal Procedure Code, 1872, s. 359—Witness for the defence—Failure to attend—Refusal to re-summon*—On the 30th March 1881 an accused person on his trial before a Magistrate asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There

that such application was not made in "good faith" *Held* that the provisions of s 359 of Act X of 1872 were clearly inapplicable to the case as it stood before the Magistrate on the 18th April, and he was bound to make a further attempt—the first attempt seemed to have been nominal merely—to secure the attendance of the absent witness EMPRESS *v.* RUKNUD-DIN . . . I. L. R., 4 All., 5

44. ——— *Witness for defence—Refusal by Magistrate to summon witness under Criminal Procedure Code, 1882, s 216—Witness summoned by Sessions Court—Criminal Procedure Code, 1882, ss. 291, 540.*—Upon the committal of certain persons for trial before the Sessions Court for offences under the Penal Code, each of the prisoners, under s. 211 of the Criminal Procedure Code, gave in a written list of the persons whom he wished to be summoned to give evidence at the trial. On each of these lists the name of a particular person was entered, who objected under s 216 to being sum-

the committing Magistrate passed an order requiring

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued.*

the prisoners to satisfy him that there were reasonable grounds for believing that the objector's evidence was material, and, having heard arguments on both sides, passed an order refusing to issue the summons. The only ground stated by the Magistrate for this order was that he thought the reasons assigned for

Judge, upon an application filed on behalf of the prisoner, passed an order directing that the objector should be summoned to give evidence. The order

such refusal, and such reasons must show that the

circumstances, be desirable to interfere with his order in revision. *Per* STRAIGHT, *J.*, that s. 540 is not the only provision of the Criminal Procedure Code which confers on a Sessions Judge powers of the kind exercised by him in this case. Under s. 291, though the summoning of witnesses by an accused through the medium of the Sessions Judge is not a matter of right, yet the Judge has an inherent power, if he thinks proper to exercise it, to sanction the summoning of other witnesses than those named in the list delivered to the committing Magistrate. IN THE MATTER OF THE PETITION OF THE RAJAH OF KANTIT . . . I. L. R., 8 All., 668

45. ——— *Refusal to summon witnesses not declared material unless expenses are paid*—A prisoner who was about to be committed

defray the cost of the attendance of

WITNESS—CRIMINAL CASES
—*continued.*

2. SUMMONING WITNESSES—*continued.*

46. ——————— *Omission to take steps to summon witnesses*.—A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that, he produced only two witnesses, who were examined. *Held* that, as the complainant did not apply to the Magistrate to issue summonses on the other witnesses, or ask him to proceed under s. 202, Code of Criminal Procedure, 1861, the Magistrate was not wrong in law in deciding the case on the evidence which was before him. QUEEN *v.* NOTOBUR BERA . 15 W. R., Cr., 87

47. ——————— *Refusal to summon witness for accused—Participation in charge—Illegal conviction*.—A refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge, vitiates the trial and conviction. RAM SHAHAI CHOWDHRY *v.* SANKER BAHADUR . 6 B. L. R., Ap., 65: 15 W. R., Cr., 7

48. ——————— *Refusal to summon witnesses named for the defence*.—Where the Subordinate Magistrate convicted certain persons [illegible]

49. ——————— *Criminal Procedure Code, 1872, s. 362—Warrant case—Refusal of Magistrate to summon witness named by accused—Error or defect in proceedings*.—Where the Magis- [illegible]

summon such person, as required by s. 362 of the Criminal Procedure Code,—*Held* that the conviction of the accused person must be set aside, and the case be reopened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law. IN THE MATTER OF THE PETITION OF SAT NARAIN SINGH

[I. L. R., 3 All., 392

50. ——————— *Criminal Procedure Code, 1882, ss. 256, 257—Right of accused to call witness upon charge being framed in a warrant case*.—The accused was charged with having committed an offence under s. 420 of the Indian Penal Code. [illegible]

was framed. The accused then stated that he could produce witnesses if the case were postponed, but the Magistrate refused postponement on the ground that at the outset the accused had stated that he had no witnesses. The accused moved the High Court and stated in his affidavit that what he had meant was that he had no witnesses present in Court. *Held* that, under ss. 256 and 257 of the Criminal Procedure Code, the accused was, as of right, entitled to an adjournment for the purpose of adducing evidence in defence. EMTAZ ALI *v.* JAGAT CHANDRA BANERJEE

[1 C. W. N., 313

51. ——————— *Right of accused to have witnesses re-summoned and re-heard—Criminal Procedure Code (Act X of 1882), s. 350 (a), s. 537—Commencement of proceedings—Interlocutory orders—Trial, Meaning of—Right to have witnesses summoned and re-heard—Irregularity—Refusal to recall witnesses*.—An accused person does not lose the right of having the witnesses re-summoned and re-heard under prov. (a), s. 350, of the Criminal Procedure Code, because an interlocutory application for enforcing the attendance of certain witnesses has been made and granted not at the trial, but before the trial and with a view to the trial. The proper time for making such application is when the trial commences before the Magistrate. The expression "trial" means the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecutions and for the defence, if the accused be defended, present in Court, for the hearing of the case. S. 537 of the Criminal Procedure Code cannot cure the defect in the proceedings by reason of the Magistrate's refusal to re-summon and re-hear the witnesses in contravention of prov. (a), s. 350. GOBERSIRDAR *v.* QUEEN-EMPRESS

[I. L. R., 25 Calc., 863
2 C. W. N., 465

52. [illegible]

53. ——————— *Non-attendance of witness, Enquiry into reasons for—Criminal Procedure Code, 1861, s. 221*.—It was held that an enquiry should be made into the excuse given by a person for his non-attendance as a witness before enforcing a fine for such non-attendance, in order that the Sessions Judge, or other authority, might fairly exercise the discretion given him by s. 221 of the Criminal Procedure Code. QUEEN *v.* AMEER KHAN. IN RE BHUGWAN DOSS . 2 N. W., 113

54. ——————— *Mode of summoning witnesses—Recognizances to appear*.—A subordinate Magistrate cannot bind over witnesses by recognizances to appear before himself. The

WITNESS—CRIMINAL CASES —continued.

2 SUMMONING WITNESSES—*continued.*

proper course to enforce attendance is by summons and, if that fails, by warrant ANONYMOUS
[4 Mad., Ap., 6

See ANONYMOUS . . 4 Mad., Ap., 17

VENKATAPPAH *v* PAPAMMAH . 5 Mad., 132

55. — — *Criminal Procedure Code, 1861, s 191—Warrant to enforce attendance of witnesses.*—A Magistrate was not bound, under s. 191 of the Code of Criminal Procedure, to enforce the attendance of witnesses by warrant except upon proof of due service of summons. IN THE MATTER OF THE PETITION OF ABDOOR RUHMAN
[7 W. R., Cr., 37

QUEEN *v* SUTHERLAND. QUEEN *v.* NARAIN SINGH . . . . 14 W. R., Cr., 20

56. — — *Criminal Procedure Code, ss. 76, 81, and 160—Investigation by police—Power of Magistrate to issue warrant for arrest and production of witness—Penal Code, s. 174*—Where a District Magistrate issued a warrant for the arrest and production of a witness ... gation ... xecute ... person ... that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate ... of the Code of Criminal Procedure. *Held* also that, as the investigation was held by a police officer under Ch XIV of the Criminal Procedure Code, the proper course ... Police ... under s ... on failu ... prosecute ... under s. 174 of the Penal Code. QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE
[I. L. R., 24 Calc., 320
1 C. W. N., 154

57. — *Issuing summons to witnesses out of jurisdiction.*—Magistrates may, ...
[6 Mad., Ap., 6

58. — *Service of summons—Affixing summons to door of house.*—Service of summons on a witness by affixing it to the door of his house was held to be no evidence of his having received it, in a charge brought against him of disobeying the summons. ANONYMOUS
[6 Mad., Ap., 29

59.— *Service of summons.*—The mere showing to a witness of a summons issued under s. 186 of the Criminal Procedure Code, 1861, is not sufficient service. Either the original should be left with the witness, or it should be exhibited to him, and a copy of it delivered or tendered REG. *v.* KARSANLAL DAYATRAM
[5 Bom., Cr., 20

3. AVOIDING SERVICE.

... of a witness when he ...

BANERJEE QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR
[4 B. L. R., Ap., 1: 13 W. R., Cr., 1

4. SWEARING OR AFFIRMATION OF WITNESSES.

61. — **Oath or affirmation**—*Criminal Procedure Code, 1861, s. 199—Memorandum of deposition.*—A witness may be examined either on ...
[10 W. R., Cr., ...

5. EXAMINATION OF WITNESSES.

(a) GENERALLY.

62. — **Power of Court to dispense with examination of witnesses**—*Criminal Procedure Code, 1872, s. 362.*—S 362 of the Code of Criminal Procedure did not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution. QUEEN *v.* PARASURAMA NAIKAR . I. L. R., 4 Mad., 329

... nesses for the prosecution,—*Held* ... ment was illegal. QUEEN *v.* CHINNA VEDAGIRI CHETTI . . . . I. L. R., 4 Mad., 227

QUEEN *v.* SREENATH MOOKHOPADHYA
[7 W. R., Cr., 45

DINONATH GOPE *v.* SARODA MOOKHOPADHYA
[7 W. R., Cr., 47

64. — *Power of interference of High Court—Criminal Procedure Code, 1861, s. 363*—Where it was not shown that there were any witnesses forthcoming for examination other than those whom the Sessions Judge did

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

examine, the Court refused, with reference to s 363, Code of Criminal Procedure, to interfere with the Sessions Judge's proceedings QUEEN v. JUMDEM SINGH . . 12 W. R., Cr., 73

65. ———— **Duty of defence as to calling witnesses**—*Inference from failure to call witnesses.*—A prisoner or his counsel is at liberty to offer evidence or not as he thinks proper, and no inference unfavourable to him can be drawn because he takes one course rather than another. HURRY CHURN CHUCKERBUTTY v. EMPRESS

[I. L. R., 10 Calc., 140: 13 C. L. R., 358

66. ———— **Duty of prosecution as to calling witnesses**—*Inferences to be drawn on failure to call witnesses—Misdirection.*—It is *primâ facie* the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution, and who must be able to give important information If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused. IN THE MATTER OF THE PETITION OF DHUNNO KAZI. EMPRESS v. DHUNNO KAZI I. L. R., 8 Calc., 121

S. C. DHUNNO KAZI v. EMPRESS

[10 C. L. R., 151

67. ———— *Obligation to call witnesses examined before Magistrate*—Where a Sessions Judge gave it as a sufficient reason for the non-production of certain witness in Court on the part of the prosecution that they had been examined by the committing Magistrate against the [illegible]

68. ———— ———— *Trial in Sessions Court—Non-production of material witnesses for Crown—Duty of public prosecutor.*—It is the duty [illegible]

by their evidence; but in such circumstances he [illegible]

apparent on the face of the proceedings, inferences

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

mentioned in expl. 2 of s. 87 of Act IV of 1877, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo.* EMPRESS *v.* CHUNDER NATH DUTT

[I. L. R., 5 Calc., 121: 4 C. L. R., 305

74. ——— Witnesses for prosecution —*Witness examined by prosecution after defence.*— It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. QUEEN *v.* CHOTEY LAL . . . . . 3 N. W., 271

QUEEN *v.* SHAMKISHORE HOLDAR

[13 W. R., Cr., 36

Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Code of Criminal Procedure. QUEEN *v.* SHAM KISHORE HOLDAR . . . . . 13 W. R., Cr., 36

75. ——— *Criminal Procedure Code, 1861, s. 372—Recalling witness for prosecution.*—Under s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. QUEEN *v.* ASSANOOLLAH

[13 W. R., Cr., 15

76. ——— Witnesses for defence—*Criminal Procedure Code, 1861, s. 372—Duty of Court as to witnesses for defence.*—Under s. 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. QUEEN *v.* MOOKUN

[12 W. R., Cr., 22

77. ——— *Omission to examine witnesses for accused.*—The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked. BHUGWAN *v.* DOYAL GOPE

[10 W. R., Cr., 7

78. ——— *Criminal Procedure Code (Act XXV of 1861), s. 266—Witnesses attending voluntarily.*—In cases coming under Ch. XXV of Act XXV of 1861, to which s. 266 applied, and not s. 252, the Magistrate was not obliged to call on the accused to produce his witnesses, but he was bound to hear them if they attended voluntarily, as by s. 266, read with s. 262, they were supposed to do. IN RE BHIKA ROY

[7 B. L. R., 568 note

S. C. BHIKHA ROY *v.* DHOTUN ROY

[10 W. R., Cr., 36

79. ——— *Obligation of* [illegible] *—Criminal Procedure* [illegible]

QUEEN *v.* AMEER CHAND NOHATTA

[13 W. R., Cr., 63

80. ——— *Refusal of Court* [illegible] *—Illegal* [illegible]

Code, to allow the examination of a witness who had been tendered on behalf of the accused. QUEEN *v.* MAHIMA CHANDRA CHUCKERBUTTY

[4 B. L. R., Ap., 77: 12 W. R., Cr., 77

81. ——— *Criminal Procedure Code (1882), ss. 210 and 212—Sessions case—Defence reserved—Power of Magistrate to examine witnesses named for the defence.*—The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence, does not preclude the Magistrate from acting under s. 212 of the Code of Criminal Procedure, and examining any witnesses named by the accused as witnesses whom he intended to call in the Sessions Court. IN THE MATTER OF THE PETITION OF RUDRA SINGH

[I. L. R., 18 All., 330

82. ——— *Criminal Procedure Code (1882), ss. 202 and 540—Summons case.*—Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, [illegible] examined a witness called [illegible]

Procedure Code in receiving fresh evidence [illegible] *evidence on both sides had been taken,* and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH . . I. L. R., 24 Calc., 167

83. ——— *Witnesses under examination—Threatening of witnesses by Court.*—It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless

WITNESS—CRIMINAL CASES
—*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. QUEEN-EMPRESS *v.* HARGOBIND SINGH
[I. L. R., 14 All., 242

84. ——— Recording evidence of witness—*Obligation to record evidence of witnesses.*—If a person is before the Court as a witness, his evidence must be recorded as the law directs, if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement. QUEEN *v.* PHOOLCHAND *alias* PHOLEEL AHIR . . . 8 W. R., Cr., 11

85 ——— *Note of deposition—Criminal Procedure Code, 1861, s. 195.*—A separate a note of each witness's deposition was required to be taken by s 195 of the Code of Criminal Procedure, 1861, which was not satisfied by a statement that a witness "deposes as last witness." REG. *v.* BYHA VALAD SURJIM . . 1 Bom., 91

86. ——— Mode of examination—*Examination in absence of accused.*—It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused. BIHOORAM *v.* ALLAHO KOLITA . . 1 B. L. R., S. N., 8

QUEEN *v.* RAMNATH . . 7 W. R., Cr., 45

87. ——— *Examination in absence of accused.*—Where witnesses are not examined in the presence of the accused, the conviction will be quashed. QUEEN *v.* LALLA CHOWDREY
[2 N. W., 49

QUEEN *v.* RAMNATH . . 7 W. R., Cr., 45

ANONYMOUS . . . 3 Mad., Ap., 34

QUEEN *v.* RAJCOOMAR SINGH 8 W. R., Cr., 17

QUEEN *v.* RAMDHUN SINGH . 11 W. R., Cr., 22

QUEEN *v.* RAM DASS BOISTUB
[11 W. R., Cr., 35

QUEEN *v.* RUSSICK DOSS . 24 W. R., Cr., 76

ALI MEAH *v.* MAGISTRATE OF CHITTAGONG
[25 W. R., Cr., 14

88. ——— *Evidence not taken in presence of accused—Criminal Procedure Code, 1861, s. 194.*—When the accused has been arrested, the evidence of a witness for the prosecution ought, under s. 194 of the Code of Criminal Procedure, to be taken in the presence of the accused. QUEEN *v.* HOSSAIN ALI CHOWDHRY
[8 W. R., Cr., 74

89. ——— *Criminal Procedure Code, 1872, s. 327—Evidence taken in absence of accused.*—Under s. 327, Criminal Procedure Code, 1872, the witnesses for the prosecution should be examined in the presence of the accused when practicable, notwithstanding that their statements have been previously recorded in his absence. QUEEN *v.* BOCHA CHOWKEEDAR . 23 W. R., Cr., 33

90. ——— *Evidence taken in absence of accused—Warrant cases.*—It is not irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain

[illegible]

QUEEN *v.* KASSY SINGH. QUEEN *v.* HULKOREE SINGH . . . . 21 W. R., Cr., 61

91. ——— *Depositions taken in absence of accused—Criminal Procedure Code, 1872, s. 327.*—S. 327 of the Criminal Procedure Code, 1872, which permitted the depositions of a witness to be taken in the absence of an accused

[illegible]

absconded, and after due pursuit could not be arrested. QUEEN *v.* ETWAREE DHARFE
[21 W. R., Cr., 12

92. ——— *Duty of committing Magistrate—Examination on oath in absence of accused—Statements of witnesses.*—The Magistrate to whom a complaint was made examined certain persons on oath in the absence of the accused, merely for the purpose of ascertaining

[illegible]

MATTER OF THE PETITION OF ASGUR HOSSEIN. EMPRESS *v.* ASGUR HOSSEIN
[I. L. R., 6 Calc., 774

S. C. IN RE ASGUR HOSSEIN . 8 C. L. R., 124

93. ——— *Examination of, in absence of accused—Criminal Procedure Code, 1872, s. 327—Power to quash commitment.*—An accused who was charged with murder not being found, the witnesses were examined under s. 327 of Act X of 1872 in his absence. The accused was

[illegible]

Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under s 264 of the Criminal Procedure Code, and then under s. 351 summon such witnesses as he may deem material. *Semble*—The mere absence of questions in the record

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

of a prisoner's statement does not render it inadmissible. EMPRESS *v.* SAGAMBUR [12 C. L. R., 120

94. ———— *Reading deposition of witness.*—In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before. To read to a witness his deposition on a former trial is not an examination of the witness in the presence of the accused. QUEEN *v.* KHAMUT W. R., 1864, Cr., 1

QUEEN *v.* AFFAZUDDEEN . W. R., 1864, Cr., 13

QUEEN *v.* KANYE SHEIKH [W. R., 1864, Cr., 38

Queen v. Kalundar Doss . 2 N. W., 100

See also QUEEN *v.* MOHUN BANFOR [22 W. R., Cr., 38

95. ———— *Reading depositions instead of examining witnesses de novo.*—The High Court refused to interfere when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*. PURMESSUR SINGH *v.* SOBDOP AUDHI KAREE . . . 13 W. R., Cr., 40

96. ———— *Criminal Procedure Code, 1882, s. 288—Trial before Court of Session—Evidence given before committing Magistrate used at trial to contradict witnesses.*—S. 288 of the Criminal Procedure Code was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before the Court itself. *Queen v. Amanulla, 12 B. L. R., Ap., 15,* referred to. A Judge is bound to put to the [illegible]

them an opportunity of explaining their meaning, or [illegible]

SAHAI . . . I. L. R., 7 All., 862

97. ———— Witness offering hearsay evidence—*Duty of Court.*—The moment a witness commences giving evidence which is inadmissible,—*e.g.*, hearsay evidence,—he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. QUEEN *v.* PITTAMBUR SIRDAR . . 7 W. R., Cr., 25

QUEEN *v.* KALI CHURN GANGOOLY [7 W. R., Cr., 2

98. ———— Refreshing memory of witness—*Ground for inspecting document to refresh memory of witness—Right to inspect document* [illegible]

as to the whole of the facts; (ii) to check the use of improper documents; (iii) to compare his oral testimony with his written statement. *Per* FIELD, J.—The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to [illegible]

PETITION OF JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON . . . I. L. R., 8 Calc., 739

S. C. JHUBBOO MAHTON *v.* EMPRESS [12 C. L. R., 233

99. ———— *Memorandum made by police officer—Criminal Procedure Code, 1872, s. 119.*—In giving evidence a police officer may refresh his memory by referring to documents in which he has, under s. 119 of Act X of 1872, reduced into writing statements of persons examined [illegible]

previous statements of the witnesses. ROGHUNI SINGH *v.* EMPRESS [I. L. R., 9 Calc., 455: 11 C. L. R., 589

100. ———— *Memorandum made by police officer—Criminal Procedure Code* [illegible]

KALI CHURN CHUNARI. EMPRESS *v.* KALI CHURN CHUNARI . . . I. L. R., 8 Calc., 154

S. C. IN THE MATTER OF KALI CHURN CHUNARI [10 C. L. R., 51

101. ———— *Medical witness. Evidence of—Experts—Examination of medical witness examined before Magistrate—Criminal Procedure Code, 1872, s. 323.*—The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and

to ask the witness's opinion on those facts. S. 323 of Act X of 1872 did not in any way preclude the Judge at a Sessions trial from calling and examining the medical witness who had been examined before the Magistrate, and in every case in which the deposition taken by the Magistrate is essentially deficient or requires further elucidation, such witness should be called and examined by the Sessions Judge. A medical man in giving evidence may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom. ROGHUNI SINGH *v.* EMPRESS

[I. L. R., 9 Calc., 455 : 11 C. L. R., 569

102. ——— Treatment by Court of witnesses for defence.—When a prisoner makes a distinct defence, and calls witnesses to prove it, in- [illegible]

or any part of it. QUEEN *v.* BHOONEE PUTWA

[11 W. R., Cr., 9

(b) EXAMINATION BY COURT.

103. ——— Examination of witness by Judge— [illegible]

and opposed to the provisions of s. 138 of the Evidence Act. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act. NOOR BUX KAZI *v.* EMPRESS

[I. L. R., 6 Calc., 279 : 7 C. L. R., 335

(c) CROSS-EXAMINATION.

104. ——— Duty of Court as to allowing cross-examination—*Cross-examination of witnesses by accused.*—The Judge ought, if re- [illegible]

prosecutor at the trial. His refusal to do so is, however, not an error in law. REG. *v.* FATECHAND VASTACHAND . . . 5 Bom., Cr., 85

105. ——— *Right of accused to cross-examine witnesses for the prosecution before commitment—Criminal Procedure Code (1861), s. 194; (Act X of 1872), s. 191; (Act X of 1882), ss. 210, 256, 257, and 288.*—An accused person has the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate previous to commitment. The fact that the Criminal Procedure Code of 1872 contained an express provision to that effect, which was omitted in the Code of 1882, together with the provision of ss. 210 and 256 of the latter Code, must not be taken to show an intention on the part of the Legislature to deprive an accused of that right. The express provision in the Code of 1872 was probably thought by the Legislature, when framing the Code of 1882, as being redundant, seeing that the Evidence Act of 1872, which was passed at the same time as the Criminal Procedure Code of 1872, made sufficient provision on the subject. S. 256, moreover, does not prohibit cross-examination before a charge is framed; it [illegible]

v. SAGAL SAMBA SAJAO I. L. R., 21 Calc., 642

106. ——— *Further cross-examination by accused—Criminal Procedure Code, 1882, ss. 256, 257.*—*D* was put upon his trial for having caused grievous hurt to *M.* The Magistrate, after hearing the evidence for the prosecution, framed [illegible]

[illegible] refused to allow the accused to cross-examine them, and, upon the accused declining to examine [illegible]

witnesses for the prosecution under s. 257 of the [illegible]

107. ——— Right to cross-examine—*Right of accused to cross-examine witnesses.*—The right of an accused party to cross examine witnesses is limited to a right to cross examine the witnesses

WITNESS—CRIMINAL CASES —*continued.*

5 EXAMINATION OF WITNESSES—*continued.*

witness QUEEN *v.* SURROOPCHUNDER PAUL [12 W. R., Cr., 75

108. ———— *Evidence Act, s. 165—Witness called by the Court.*—Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination

allowed to cross-examine. EMPRESS *v.* GRISH CHUNDER TALUKDAR [I. L. R., 5 Calc., 614 : 5 C. L. R., 364

109. ———— *Witness called by Court—Tendering witnesses for cross-examination—Criminal Procedure Code (Act X of 1882), s. 540.*—In a trial before the Sessions Court the

[I. L. R., 14 Calc., 245

110. *Cross-examination of witness called by the Court—Evidence Act (I of 1872), s. 165—Criminal Procedure Code (1882), s. 540.*—Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness,—*Held* that the Magistrate was wrong in not allowing the complainant's attorney to cross-

[I. L. R., 24 Calc., 288

111. ———— *Hostile witness —Evidence Act, s. 154.*—The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRKAR *v.* QUEEN-EMPRESS . . I. L. R., 13 Calc., 53

112. ———— *Medical witness.* —As to cross-examination by accused of medical witness called in a professional capacity, *see* QUEEN *v.* JOHUN DUTT [6 B. L. R., Ap., 88 : 15 W. R., Cr., 34

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

113. ———— *Evidence Act (II of 1855), s. 34*

statements

pleader was

Magistrate

defence on

statements

might do so as regards previous statements which were reduced to writing, without showing the writing. S. 34, Act II of 1855, explained TOKHEYA RAI *v.* TUPSEE KOER . . . 15 W. R., Cr., 23

114. ———— *Evidence Act, 1855, s. 23—Cross-examination on previous statements reduced to writing.*—A witness, when under examination-in-chief before the Court of Session, should not have his attention directed to his deposition before the Magistrate. He might, under s. 23, Act II of 1855, be cross-examined as to previous statements made by him in writing, when his

115. ———— *Prosecution witness examined before the Magistrate but not called in the Court of Session—Witness called by*

witness was

counsel for

the defence

examination

what he ha

Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court, if the witness proved himself a hostile witness. QUEEN-EMPRESS *v.* ZAWAR HUSEN I. L. R., 20 All., 155

116. ———— Right of witness on cross-examination—*Right to qualify statements.*—A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief. QUEEN *v.* TULSI DOSADH . . . . . 18 W. R., Cr., 57

117. ———— Right to recall witnesses for cross-examination—*Cross-examination of, by accused—Witnesses for defence—Record of evidence.*—The charge having been read to the accused person, he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence who were not in attendance. The Magistrate

WITNESS—CRIMINAL CASES —*continued*

5. EXAMINATION OF WITNESSES—*continued.*

cross-examined by the accused on the date fixed for the examination of the witnesses for the defence.

118. ——— Cross-examination after reading depositions—*Irregularity in examination—Criminal Procedure Code, ss. 286, 258.*—At a trial before a Sessions Court, the attorney who

119. ——— Cross-examination of witness after his examination by the Court—*Evidence Act (I of 1872), s. 155.*—The principle that parties cannot, without the leave of the Court, cross-examine a witness whom, the parties having already examined or declined to examine, the Court itself has examined, applies equally whether it is intended to direct the cross-examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends (or is designed) to get rid of the effect of each and every answer, just as much as one that may bring out an inconsistency or contradiction, s. 155 of Act I of 1872. REG. *v.* SAKHARAM MUKUNDJI . . . 11 Bom., 166

120. ——— Recalling witnesses for cross-examination—*Refusal to recall witness*—

THE PETITION OF BELILIOS. BELILIOS *v.* QUEEN [19 W. R., Cr., 53

121. ——— *Criminal Procedure Code, 1861, s. 252.*—A Magistrate could not

MATTER OF THAKOOR DYAL SEN [17 W. R., Cr., 51

IN THE MATTER OF THE PETITION OF NOBIN CHAND BANERJEE . . . 25 W. R., Cr., 32

WITNESS—CRIMINAL CASES —*continued*

5. EXAMINATION OF WITNESSES—*continued.*

122. ——— *Warrant cases—Criminal Procedure Code, 1872, Ch. XVII.*—In the trial of warrant cases the accused may, after

123. ——— *Right of accused to cross-examine witness—Criminal Procedure Code, 1872, s. 218.*—An accused person had, under

re-summoned. QUEEN *v.* LALL SINGH [6 N. W., 270

124. ——— *Criminal Procedure Code, 1872, s. 218—Recall of witnesses for prosecution.*—Under s. 218 of the Code of Criminal

125. ——— *Cross examination—Recalling witnesses for further cross-examination after charge—Criminal Procedure Code (Act X of 1882), s. 257.*—There is, under

nesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day

frustrated in consequence of the refusal to recall

in a needlessly carping and litigious spirit, losing

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

sight of the main purpose of those proceedings and giving over-attention to matter of mere form. NILKANTA SINGH *v.* QUEEN-EMPRESS [I. L. R., 20 Calc., 469

126. ——— *Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of 1872), s. 137.*—One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. RAM CHAND CHATTERJEE *v.* HANIF SHEIKH . I. L. R., 21 Calc., 401

127. ——— *Cross-examination of prosecution witnesses before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purposes of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), ss. 254, 256, and 257—Penal Code (Act XLV of 1860), s. 342.*—After

to state whether he wishes to cross-examine, and, if

[illegible] 4 C. W. N., 469

128. ——— *Summoning witnesses for prosecution for further cross-examination—Refusal of such application for inadequate reason—Criminal Procedure Code, 1898, s. 257.*—The mere fact that the witnesses for the prosecution had already been cross-examined is not a sufficient reason for refusing to re-summon them, unless the Magistrate expressly records his opinion that the application for the second cross-examination is within the terms of s. 257 of the Criminal Procedure Code for the purpose of vexation or delay or for defeating the ends of justice. An order refusing to re-summon witnesses without assigning any such reasons is not a proper order. When an application to re-summon witnesses for the prosecution was

129. ——— *Criminal Procedure Code (Act V of 1898), ss. 256, 257—Cross-examination of witness for prosecution, Right of.*—

When after the charge was drawn the accused

130. ——— *Cross-examination previous to framing of charge—Criminal Procedure Code, 1872, s. 218.*—An accused person was held to be not deprived of the right given him by s. 218, Act X of 1872, to recall and cross-examine the witnesses for the prosecution after the charge had

section, and there was no sufficient proof that the accused consented to the discharge of the witnesses for the prosecution, it was held that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing re-summoned. *Quære*—If the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses. QUEEN *v.* LALL MAHOMED . . . . . 6 N. W., 284

131. ——— *Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.*—An accused should be allowed at preliminary inquiries before a Magistrate to cross-examine the witnesses; but [illegible] shall be examined upon [illegible] is left [illegible] such [illegible] Magis- [illegible] [illegible] minal charge against the prisoner. QUEEN *v.* [illegible] BISWAS . . . 10 W. R., Cr., 25

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*concluded.*

132. ———— *Right of accused to recall witnesses for prosecution—Criminal Procedure Code (Act X of 1872), ss. 217, 218.*—Reading ss 217 and 218 of the Criminal Procedure

[I. L. R., 4 Calc., 20

S. C. IN THE MATTER OF FAIZ ALI [8 C. L. R., 325

133. ———— *Cross-examination of witnesses for the prosecution.*—As a rule, the proper and convenient time for the purpose of cross examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross-examine the witnesses for the prosecution at any period of the defence when the Court may think such a step right and proper. KHURRUCKDHAREE SINGH *v.* PERSHADEE MUNDUL . . 22 W. R., Cr., 44

134. ———— *Refusal to allow accused to recall witnesses for prosecution—Waiver of right by accused.*—Where certain accused persons,

after the framing of the charge.—*Held* that accused persons always had a right to recall prosecution witnesses, which ceased only when they themselves waived it; that Magistrates could waive all inconvenience to witnesses by asking accused persons, on the drawing up of charges, whether they required

[20 W. R., Cr., 20

6. CONSIDERATION AND WEIGHT OF EVIDENCE.

135. ———— Weight of evidence—*Single witness—Evidence of fact.*—The evidence of one witness, if reliable, is sufficient to prove a fact. ZALEM MISSER *v.* KUNDUN KOOER [11 W. R., 194

BALINDUR NARAIN *v.* KAILA MEESCO KOOE [18 W. R., 341

PROSONNO NARAIN DEB *v.* ROMONEE DOSSEE [10 W. R., 236

136. ———— Discrepancies in evidence of witnesses—*Effect of discrepancies.*—Discrepancies in the evidence of witnesses are not the less

WITNESS—CRIMINAL CASES —*concluded.*

6. CONSIDERATION AND WEIGHT OF EVIDENCE—*concluded.*

destructive of their testimony because a greater sagacity on the part of the witnesses would have avoided them REG. *v.* KALU PATIL . 11 Bom., Cr., 146

137. ———— Consideration of evidence —*Assumption of bad character of prisoner.*—A Judge cannot ... with an ... the prisoner

[... W. R., Cr., 103

138. ———— Value of evidence—*Value* ...

not be true. *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. QUEEN *v.* AHMED ALLY [11 W. R., Cr., 25

139. ———— *Evidence disbelieved in some parts and accepted in others.*—Where the evidence at a trial is in part disbelieved, as to which part it is thought that the witnesses had committed perjury, it is unsafe to accept the evidence of those witnesses in other parts and to convict the prisoner thereon JASPATH SINGH *v.* QUEEN-EMPRESS . I. L. R., 14 Calc., 164

WORKING FOR GAIN.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

WORKMAN.

See ACT XIII OF 1859.
[3 B. L. R., A. Cr., 32
I. L. R., 7 Mad., 100
I. L. R., 7 Bom., 379
I. L. R., 10 Bom., 96

WRITTEN STATEMENT.

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS
[B. L. R., Sup. Vol., 904
1 B. L. R., A. C., 133
9 W. R., 83, 130, 290
16 W. R., 257
23 W. R., 220
I. L. R., 14 Bom., 516

See SET-OFF—GENERAL CASES.
[14 W. R., 473
I. L. R., 15 Mad., 22

———— Denial of title in—

See FALSE EVIDENCE—GENERAL CASES.
[I. L. R., 6 All., 626

WRITTEN STATEMENT—*continued.*

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE.
[I. L. R., 13 Calc., 96
I. L. R., 15 Mad., 123

1. ———— **Form and contents of written statement**—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh* v *Shamachurn Bhutto, 11 Moore's I. A., 7; Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moore's I. A., 468*, and *Narainee Dossee* v. *Nurrohurry Mohuto, Marsh., 70*, that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. CHOVA KARA *v.* ISA BIN KHALIFA
[I. L. R., 1 Bom., 209

2. ———— *Argumentative statement.*—A written statement should not be argumentative. BISHEN SAHAYE SINGH *v.* BEER KISHORE SINGH . . . . . . 8 W. R., 296

3. ———— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 121.*—An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. HALFORD *v.* EAST INDIAN RAILWAY COMPANY
[12 B. L. R., Ap., 19

4. ———— *Irrelevant matter—Application to take written statement off the file.*—Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bonâ fide* nature of the defence, and nothing else. KASURILAL DEY *v.* TREMEARNE
[3 B. L. R., Ap., 12

5. ———— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.*—The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced

WRITTEN STATEMENT—*continued.*

6. ———— *Inconsistent pleas—Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the [illegible]

dispositions. The defendants who claimed under a [illegible]

that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan* v. *Hoseini Bibi, I. L. R., 15 Calc., 684: L. R., 15 I. A., 81,* distinguished. NARAYANASAMI *v.* RAMASAMI
[I. L. R., 14 Mad., 172

7. ———— **Court-fee on written statement**—*Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time [illegible]

CHERAG ALI *v.* KADIR MAHOMED
[12 C. L. R., 387

8. ———— **Verification of written statement**—*Admission on record without verification*—[illegible]

9. ———— *Verification on behalf of Corporation—Principal officer of Corporation*—[illegible]

written statement on behalf of a Corporation Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—*continued.*

that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written state-

admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, their observance might be waived by the plaintiffs, and if they were prepared to waive objections to the sufficiency of the verification, further evidence of the nature indicated might be dispensed with. SREENATH BANERJEE *v.* EAST INDIAN RAILWAY CO. [I. L. R., 22 Calc., 268

10. ——— *Application to verify—Notice—Practice.*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. FINLAY, CAMPBELL & CO. *v.* STEELE [1 Ind. Jur., N. S., 39

11. ——— *Application to verify by agent—Notice.*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. OVEREND, GURNEY & CO. *v.* STEELE [1 Ind. Jur., N. S., 40

thereto. JADUB RAM DEB *alias* JADUB CHUNDER DEB *v.* RAM LOCHUN MUDUCK . 5 W. R., 56

13. ——— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss. 28, 123.*—The

neglected to file one himself. DENOMOYE DOSSEE *v.* TARRACHURN COONDOO CHOWDHRY [Bourke, O. C., 153

Court, was held to be contrary to the provisions of ss. 120 and 122 of the Civil Procedure Code, 1859. ALI NUKEE *alias* EMDAD ALI *v.* TORAB ALI *alias* MIRZA NAWAB . . . . W. R., 1864, 44

15. ——— Written statement by third party—*Power of Court.*—A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. SURNOMOYEE *v.* BYKUNT CHUNDER MUSTOFEE . . . . 25 W. R., 17

16. ——— Defendant neglecting to put

expense of the defaulting party. RAMRUTTON *v.* ORIENTAL INLAND STEAM NAVIGATION COMPANY [2 Hyde, 89

17. ——— Additional written statement—*Practice—Act VIII of 1859, s. 122.*—An

DASMANI DASI *v.* SRINATH GHOSE [3 B. L. R., Ap., 11

18. ——— *Supplemental statements, Filing of.*—Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. MUNCHERSHAW BEZONJI *v.* NEW DHURUMSEY SPINNING & WEAVING COMPANY . . . I. L. R., 4 Bom., 576

19. ——— *Civil Procedure Code, 1859, s. 122.*—A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under s. 122, Civil Procedure Code, 1859, which did not add to or vary the plaintiff's claim. JAHANGEER BUKSH *v.* BHICKAREE LALL . . . . 11 W. R., 71

20. ——— *Statement explaining plaint.*—A written statement which was in

RAM . . . . I. L. R., 24 Bom., 403

WRITTEN STATEMENT—*concluded.*

22. ———— **Objections to written statement**—*Sunday—"Four clear days"—Civil Procedure Code, 1859, s 124*—A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s 124 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. SMALLWOOD *v.* PARRY . . . . . **Cor., 39**

23. ———— **Raising question not raised in written statement**—*Omission to raise equitable defence in written statement*—A defendant is not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement. GOUR CHUNDER BISWAS *v.* GREESH CHUNDER BISWAS

[7 W. R., 120

24. ———— *Raising question of jurisdiction—Fresh issue—Practice.*—Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited [illegible]

v. PALMER . . . . . **Cor., 8**

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS

See LIMITATION ACT, 1877, ART. 109
[I. L. R., 24 Calc., 413

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES
[I. L. R., 14 Bom., 408

WRONGFUL ATTACHMENT.

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT
[I. L. R., 17 Calc., 436
L. R., 17 I. A., 17

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS
[3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS

See CASES UNDER EXECUTION OF DECREE —LIABILITY FOR WRONGFUL EXECUTION.

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE.
[I. L. R., 21 Calc., 103

See UNLAWFUL COMPULSION.
[I. L. R., 19 Calc., 572

See WRONGFUL RESTRAINT.
[I. L. R., 12 Bom., 377

WRONGFUL CONFINEMENT—*continued.*

1. ———— **What amounts to imprisonment**—*Suit for damages.*—The detaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will. PARAN KUSAM NARASAYA PANTULU *v.* STUART . . **2 Mad., 396**

2. ———— **Nature of confinement**—*Penal Code (Act XLV of 1860), s. 346.*—In order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered IN THE MATTER OF THE PETITION OF SREENATH BANERJEE. EMPRESS *v.* SREENATH BANERJEE

[I. L. R., 9 Calc., 221

3. ———— **Unlawful commitment by person in authority**—*Illegal arrest—Penal Code, s. 220—Presumption of malice.*—Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code. REG. *v.* NARAYAN BABAJI . . **9 Bom., 348**

4. ———— **Obtaining arrest of wrong person**—*Liability of person setting Court in motion*—Where a wrong person is arrested and imprisoned under a decree to which he is no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly. BHEEMA CHARLU *v.* DONTI MURTI . . . . **8 Mad., 38**

5. ———— **Illegal arrest**—*Malice*—Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction ANONYMOUS . . **5 Mad., Ap., 24**

6. ———— **Wrongful restraint**—*Penal Code, ss. 339, 340, 342—Malice.*—Malice is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Indian Penal Code (Act XLV of 1860). The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed The accused as abkari inspector visited a toddy shop where the complainant and one *D* were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an [illegible]

WRONGFUL CONFINEMENT—*continued.*

[illegible]

allowed to go away. The accused prosecuted *D*, and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of *D's* trial, the complainant charged the accused with wrongful confinement under s. 342 of the Indian Penal Code. The accused pleaded that the complainant had volun- [illegible]

[illegible]

stance that the accused had acted without malice and to the best of his judgment did not protect him, if his act otherwise satisfied the definition of s. 340 of the Indian Penal Code DHANIA *v.* CLIFFORD

[I. L. R., 13 Bom., 376

7.——— Wrongful arrest—*Penal Code (Act XLV of 1860), s. 342—Criminal Procedure Code (1882), s. 54—Offence committed by a British* [illegible]

[illegible]

charge of criminal breach of trust or other cognizable offence committed outside British India. *M* was a [illegible]

[illegible]

Thereupon he obtained an order from the District Magistrate of Belgaum, dated the 15th November 1891, which exempted him from arrest for the offence [illegible]

[illegible]

Magistrate's order of the 15th November 1891, but he was detained in custody till the matter was reported [illegible]

[illegible]

stable on a charge of wrongful arrest and wrongful confinement. *Held* that the chief constable had no power to arrest the complainant without a warrant,

WRONGFUL CONFINEMENT—*concluded.*

and that he was guilty of the offence of wrongful confinement under s 342 of the Penal Code. IN RE MUKUND BABU VETHE . I. L. R., 19 Bom., 72

WRONGFUL CONVERSION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

[I. L. R., 4 Calc., 116
5 Bom., O. C., 140
I. L. R., 10 All., 133

See ONUS OF PROOF—WRONGFUL CONVERSION . . . 7 W. R., 286

See PLEDGOR AND PLEDGEE.

[I. L. R., 19 Calc, 322
L. R., 19 I. A., 60

WRONGFUL DETENTION.

——— Detention of accused by Police Inspector—*Criminal Procedure Code, 1872 s. 124.* —*Per* GLOVER, *J.*—Where a Sub-Inspector of Police is charged with having detained prisoners for more than twenty-four hours, it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as s. 124, Act X of 1872, imperatively lays [illegible]

[illegible]

[19 W. R., Cr., 32

WRONGFUL DISMISSAL.

See CASES UNDER MASTER AND SERVANT.

——— Suit for, against Government.

See GOVERNMENT 7 B. L. R., [illegible]

WRONGFUL DISTRAINT.

See BENGAL RENT ACT (VIII [illegible]

[3 B. L. R., [illegible]
6 W. R., [illegible]
[illegible]
[illegible]
[illegible]
3 B. L. R., [illegible]
7 W. R., 41

See BENGAL RENT ACT [illegible]

[illegible] 470
[illegible]

See JURISDICTION [illegible] AND REVENUE [illegible]

[illegible]

See MADRAS RENT [illegible]

[illegible]

See PRIVATE [illegible]

[illegible]

See RIOTING [illegible]

[illegible]

See TRESPASS [illegible]

[illegible]

WRONGFUL DISTRAINT—*continued.*

1.——— **Cutting and carrying away crops**—*Persons put in possession in execution of decree*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had culti- ... *"eld* that ... law of ... damages ... MONEE DABEE . . . . . . 10 W. R., 70

2 ——— **Crops, Seizure of**—*Act X of 1859, ss. 142 and 143—Trespass*—Certain sub-lessees sued in the Collector's Court the zamindar and others employed by him for the value of crops seized and ...

... person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons were considered by that section as trespassers, and were liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. RADHA MOHAN NASKAR *v.* JADUNATH DASS

[3 B. L. R., A. C., 261 : 12 W. R., 68

... such a case he was a mere trespasser. ROWSHUN *v.* BHOLANATH DOSS . 5 W. R., Act X, 67

4. ——— **Suit for damages for illegal distraint**—*Tort—Non-joinder of parties—Parties in actions of tort.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained. ...

... joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit JAGDEO SINGH *v* PADARATH AHIR . . . . . I. L. R., 25 Calc, 285

5. ——— **Persons removing property under rent law**—*Procedure—Penal Code, s. 379.*—Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. IN THE MATTER OF AGHANI. AGHANI *v.* BHAGI HALWAI . 8 C. L. R., 204

WRONGFUL DISTRAINT—*concluded.*

6. ——— **Right to sue to set aside wrongful distraint**—*Right of landlord against trespasser.*—A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BERAH

[I. L. R., 4 Calc., 890 : 4 C. L. R., 32

7. ——— **Right to damages for wrongful distraint**—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.*—When, on the ...

... property. TARINEE KANT LAHIREE CHOWDHRY *v.* RAJKISHORE TONTRY . . 24 W. R., 334

8. ——— **Right to damages**—*Act X of 1859, s. 142—Suit to contest distraint—Onus of proof—Damages.*—In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma; if ...

... *v.* PRANNATH MUNDUL . . . 8 W. R., 220

9. ——— ... *for wrongfu* ... —In order to ... 1859, it was ... the defendant in making the distress was acting ... only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up RAYE KUMUL DOSSEE *v.* JHOROO MOLLAH . . . 15 W. R., 543

See JOYLOLL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . . . . 9 W. R., 162

10. ——— **Suit on account of property damaged by wrongful distrainer**—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. NONKOO RAM *v.* WOOJOGUR ROY . 5 W. R., Act X, 68

11. ——— **Procedure**—*Beng Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREM CHAND LAHA *v.* ADDOITO DOSS . . 20 W. R., 445

WRONGFUL GAIN OR LOSS.

See THEFT . I. L. R., 15 Bom., 344
[I. L. R., 18 All., 88
I. L. R., 22 Calc., 669, 1017
I. L. R., 25 Calc., 416

WRONGFUL LOSS.

See MISCHIEF . 3 B. L. R., A. Cr., 17
[I. L. R., 3 Calc., 573
I. L. R., 12 Calc., 55, 660
I. L. R., 7 Bom., 126

WRONGFUL POSSESSION.

———— Trespasser—*Sums paid during wrongful possession, Right to recover.*—Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has, during his possession, paid certain sums for Government revenue on the supposition that he was the lawful owner (being, however, in reality, nothing more than a trespasser and wrong-doer), he is not entitled

[I. L. R., 4 Calc., 566: 3 C. L. R., 456

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE.
[I. L. R., 21 Calc., 103

See MISCHIEF . I. L. R., 12 Calc., 55

See WRONGFUL CONFINEMENT.
[I. L. R., 13 Bom., 376

1. ———— Penal Code, ss. 339, 340, 342—*Police officer, Conduct of.*—In a case of a police officer charged under Penal Code, s. 342, where there was no malice, no intention of doing an act of the nature spoken of in s. 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police officer, the facts were held not to amount to the criminal offence of wrongful restraint. IN THE MATTER OF THE PETITION OF BUDROOL HOSSEIN . . 24 W. R., Cr., 51

2. ———— s. 339—*Refusal to let person go until he gave bail.*—Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code. SHEO SHURN SAHAI *v.* MAHOMED FAZIL KHAN
[10 W. R., Cr., 20

3. ———— *Police keeping witness in custody under surveillance.*—Where the police kept a witness under surveillance for four days, the High Court held, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint. BAJRANGI LALL *v.* EMPRESS . . . . 4 C. W. N., 49

WRONGFUL RESTRAINT—*continued.*

4. ———— *Restraint and taking money on false plea.*—Where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea,—*Held* the accused were guilty of wrongful restraint, and not theft. JOWAHIR SHAH *v.* GIRDHAREE CHOWDHRY
[10 W. R., Cr., 35

5. ———— Penal Code, ss. 79 and 341—

of the Penal Code, a conviction of the petitioners under s. 341 was not right. KANAI LAL GOWALA *v.* QUEEN-EMPRESS . I. L. R., 24 Calc., 835

KANHAI GOALA *v.* QUEEN-EMPRESS
[1 C. W. N., 665

6. ———— Penal Code, ss. 52, 79, 99,

cution of duty—Arrest—Criminal Procedure Code (Act X of 1882), s. 54.*—On the 29th December

that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks and

Inspector, seeing that the complainant was an old man, and on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342, respectively, of the Indian Penal Code (XLV of 1860). The defence was that the complainant had assaulted the accused,

WRONGFUL RESTRAINT—*concluded.*

and had been on that account arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused *professed to*

Magistrate convicted the accused of wrongful confinement under s. 342 of the Indian Penal Code (Act XLV of 1860), and sentenced him to four months' rigorous imprisonment. *Held* by the High Court

might not have been strictly justifiable by law,—that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property,—still the complainant had no right of private defence

... He was therefore legally arrested,

WRONGFUL SEIZURE IN EXECUTION.

See Civil Procedure Code, 1882, s. 244 (Act XXIII of 1861, s. 11)—Questions in Execution of Decree.
[3 N. W., 187
2 Agra, 105
5 Mad., 185
12 B. L. R., 201, 203 note, 207 note, 208 note
12 W. R., 85
3 B. L. R., A. C., 413
I. L. R., 22 Calc., 483

See Damages—Measure and Assessment of Damages—Torts . Marsh., 495
[3 Agra, 202
3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

WRONGFUL SEIZURE IN EXECUTION—*concluded.*

See Cases under Execution of Decree—Liability for Wrongful Execution.

See Malicious Prosecution.
[I. L. R., 19 Bom., 485

See Cases under Sale in Execution of Decree—Wrongful Sales.

Y

YEAR.

——— Agricultural—

See N.-W. P. Rent Act (XVIII of 1873), s. 94 . I. L. R., 1 All., 512

Z

ZAMINDAR.

See Grant—Construction of Grants.
[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

See Grant—Power to Grant.
[B. L. R., Sup. Vol., 75, 774

——— Kabuliat between Government and—

See Specific Performance — Special Cases . I. L. R., 3 Calc., 464

——— Liability of, for repairs of tank.

See Contract Act, s. 70.
[I. L. R., 18 Mad., 88

——— Proof of title of—

See Ownership, Presumption of.
[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

——— Purchase by, of patni interest, Effect of—

See Merger . . 3 C. L. R., 159
[I. L. R., 19 Calc., 760

ZAMINDAR, DUTY OF—

——— Ancient tanks—*Negligence—Statutory powers—Liability for damage occasioned by overflow of tanks.*—The public duty of main-

tanks, in the maintenance of which large numbers

ZAMINDAR, DUTY OF—*concluded.*

of such zamindars with regard to these tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. A zamindar, if the banks of any such tank in his possession are washed away by an

S. C. in lower Courts. MADRAS RAILWAY COMPANY *v.* ZEMINDAR OF KAVETINUGGUR

[5 Mad., 139

and after remand . . . . 6 Mad., 180

ZAMINDAR, POWER OF—

1. ———— Power to grant lease—*Lease granted for longer term than zamindar's engagement with Government—Operation of Act XVI of 1812.*—A lease granted by a zamindar for a longer period than the term of his own engagement with the Government was not absolutely void for the excess, but only voidable, and might be confirmed *Semble*—That Act XVI of 1812 applied to agricultural leases, not to *bonâ fide* leases for other purposes NITA RAM *v.* NANUCK DASS

[1 N W., Part III, 47: Ed. 1873, 103

2. ———— *Hindu law—Authority to grant lease as manager and owner*—Under the Hindu law, the granting of a lease, though for a term, is an act within the scope of a zamindar's authority as manager and owner of the zamindari, and is, as such, binding on his successor, unless, in the circumstances in which it was made, it was otherwise than *bona fide.* RAMANADAN *v.* SRINIVASA MURTHI . . . I. L. R., 2 Mad., 80

3. ———— Power to alter boundaries—*Effect of arrangement altering boundary without sanction of Government.*—Zamindars have no authority, without the sanction of Government, to alter the boundaries of their permanently-settled estates, and to transfer villages from one zamindari to another. Such an arrangement is of no binding effect, except between the parties who have made it. RAMCHUNDER BANERJEE *v.* MUDDUNMOHUN TEWAREE

[W. R., 1864, 355

4. ———— Power to charge estate with personal debts.—A decree for possession of certain

NIMAYE CHURN SEIN *v.* RAMMONEE BEEBEE

[10 W. R., 152

ZAMINDAR, RIGHTS OF—

See MADRAS REGULATION XXV OF 1802.

[14 B. L. R., 115
L. R., 1 A., 268, 282

See WASTE LANDS I. L. R., 19 All., 172

1. ———— Nature of zamindari estate—*Power to deal with estate.*—A zamindar's estate is

ZAMINDAR, RIGHTS OF—*continued.*

analogous to an estate tail as it originally stood upon the statute *de donis!* The zamindar is the owner of the zamindari, but can neither encumber nor alienate beyond the period of his own life. * CHINTALAPATI CHINNA SIMHADRIRAJ *v.* ZAMINDAR OF VIZIANAGRAM

[2 Mad., 128

2. ———— Collections of rent—*Claim to intermediate tenures—Onus of proof.*—A zamindar has as such a *primâ facie* right to the gross collections from all the mouzahs within his zamindari. It is for parties setting up an intermediate tenure to prove their grant. PRAHLAD SEN *v.* DURGAPRASAD TEWARI

[2 B. L. R., P. C., 111: 12 W. R., P. C., 6
12 Moore's I. A., 286

3. ———— Right to rent—*Payment of revenue by zamindar.*—The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. JOTENDRO MOHUN TAGORE *v.* AYMUN BEEBEE

[1 C. L. R., 366

4. ———— Liability for rent—*Co-sharer in talukh.*—*Held* that a zamindar, by becoming a co-sharer in the talukh, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent, he only becomes bound to make an allowance for that portion which he as a co sharer ought to pay. GOBINDO COOMAR CHOWDHRY *v.* MANSON

[15 B. L. R., 56: 23 W. R., 152

5. ———— Compensation—*Compensation to patnidar for loss sustained by erection of works by railway company.*—A zamindar who receives his rents in full is not entitled to participate in compensation received by his patnidar for loss suffered by the latter in consequence of works being erected on land included in the patni. MAHARAJAH OF BURDWAN *v.* WOOMA SOONDUREE DOSSEE

[10 W. R., 12

6. ———— Sale in execution of decree—*Custom—Charge on sale-proceeds.*—Where a sale took place in execution of a decree, and it was proved by custom that the zamindar's right extended to one-fourth of the sale-proceeds in cases of involuntary sale,—*Held* that the zamindar had a right to recover the fourth share of the proceeds of sale from the judgment-creditor, who in truth reserved the sale price. The zamindar's right attached to the sale proceeds, and was a prior charge upon the proceeds. BRIJ NATH PERSHAD *v.* MAHOMED FUZL HOSSEIN

[2 Agra, Part II, 204

7. ———— *Custom—Right to share of sale-proceeds—Calculation of amount—Zamindari haq.*—Where by custom the zamindar is

ZAMINDAR, RIGHTS OF—*concluded.*

dues, to the former, it being incumbent on him to see that the zamindar is satisfied in respect of his dues. *Held* further that, under the circumstances, the plaintiffs, the zamindars, were entitled to one-fourth from R450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. HEERA RAM *v.* DEO NARAIN SINGH . Agra, F. B., 63: Ed. 1874, 48

8 ———— *Sale in execution of house in mohalla—Wajib-ul-urz—Liability of auction-purchaser—Right of zamindar to huq-i-chaharam.*—The zamindars of a certain mohalla claimed from the purchaser of a house situated in such mohalla, which had been sold in execution of a decree, one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the wajib-ul-urz. That document stated, *inter alid,* that, when a house in such mohalla was sold, a cess called chaharam was received by such zamindars "according to the understanding arrived at between the seller and the zamindars" *Held* that such zamindars were not entitled under the terms of the wajib-ul-urz to one-fourth of the sale-proceeds; that the decree-holder, because he happened to have become the auction-purchaser, could not be regarded as the "seller," and it was only the "seller" who was liable; that the terms of the wajib-ul-urz were applicable only to private and voluntary sales, and not to execution-sales; and that, under these circumstances, the suit must be dismissed. BENI MADHO *v.* ZAHURUL HAQ [I. L. R., 3 All., 797

9. ———— Sale of zamindar's right—

KISHORE . . . 2 Agra, Part II, 202

ZAMINDAR AND RAIYAT.

See CASES UNDER BENGAL RENT ACT, 1869.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER MADRAS RENT RECOVERY ACT, 1865.

See CASES UNDER RIGHT OF OCCUPANCY.

ZAMINDARI DAKS.

1. ———— Beng. Act VIII of 1862—*Effect of Act on liability of patnidars.*—Bengal Act VIII of 1862 did not relieve patnidars from their liability under the old laws of paying the zamindari dâk charges. BISSONATH SIRCAR *v.* SHURNOMOYEE [4 W. R., 6

2. ———— *Liability of patnidar.*—Where the terms of a patni lease did not make the patnidar liable for the maintenance of

ZAMINDARI DAKS—*concluded.*

the zamindari dâks, it was held that the patnidar was not liable for a tax which was imposed on the zamindar by Bengal Act VIII of 1862 RAKHAL DOSS MOOKERJEE *v.* SHURNO MOYEE [6 W. R., 100

3. ———— *Liability of patnidar.*—The provision in a pottah that if any item is laid upon the zamindar over and above the sudder jumma, the patnidar shall bear a rateable proportion of it, held not to include the charges connected with the zamindari dâk. ROHINEE KANT ROY *v.* TRIPOORA SOONDUREE DASSIA . 8 W. R., 45

SARODA SOONDURY DEBIA *v.* WOOMA CHURN SIRCAR . . . 3 W. R., S. C. C. Ref., 17

ZAMINDARI DUES AND CESSES.

—— Suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CESS. [I. L. R., 1 All., 444

ZAMORIN OF CALICUT.

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY. [I. L. R., 21 Mad., 105

See PENSIONS ACT, s. 12. [I. L. R., 21 Mad., 105

ZANZIBAR.

See CONSULAR COURT AT ZANZIBAR. [I. L. R., 3 Bom., 58

———— Consular Court at—

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL. [I. L. R., 20 Bom., 480

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 3 Bom., 334

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [I. L. R., 19 Bom., 741

ZUR-I-PESHGI LEASE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R., 18 All., 123

See DECREE—FORM OR DECREE—POSSESSION . I. L. R., 18 All., 440

See LEASE—ZUR-I-PESHGI LEASE.

See MORTGAGE—POSSESSION UNDER MORTGAGE

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION. [I. L. R., 24 Calc., 272 L. R., 23 I. A., 158 1 C. W. N., 23

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

examine, the Court refused, with reference to s 363, Code of Criminal Procedure, to interfere with the Sessions Judge's proceedings QUEEN *v* JUMDEM SINGH . . 12 W. R., Cr., 73

65. ———— Duty of defence as to calling witnesses—*Inference from failure to call witnesses.*—A prisoner or his counsel is at liberty to offer evidence or not as he thinks proper, and no inference unfavourable to him can be drawn because he takes one course rather than another. HURRY CHURN CHUCKERBUTTY *v* EMPRESS

[I. L. R., 10 Calc., 140: 13 C. L. R., 358

66.———— Duty of prosecution as to calling witnesses—*Inferences to be drawn on failure to call witnesses—Misdirection.*—It is *primâ facie* the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution, and who must be able to give important information If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused. IN THE MATTER OF THE PETITION OF DHUNNO KAZI. EMPRESS *v*. DHUNNO KAZI I. L. R., 8 Calc., 121

S. C. DHUNNO KAZI *v* EMPRESS

[10 C. L. R., 151

67. ———————— *Obligation to call witnesses examined before Magistrate*—Where a Sessions Judge gave it as a sufficient reason for the non-production of certain witness in Court on the part of the prosecution that they had been examined by the committing Magistrate against the [illegible]

68. ———————— *Trial in Sessions Court—Non-production of material witnesses for Crown—Duty of public prosecutor.*—It is the duty [illegible]

[illegible] by their evidence; but in such circumstances he [illegible]

apparent on the face of the proceedings, inferences

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

mentioned in expl. 2 of s. 87 of Act IV of 1877, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo.* EMPRESS *v.* CHUNDER NATH DUTT

[I. L. R., 5 Calc., 121: 4 C. L. R., 305

74. ———— Witnesses for prosecution —*Witness examined by prosecution after defence.*— It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. QUEEN *v.* CHOTEY LAL . . . . . 3 N. W., 271

QUEEN *v.* SHAMKISHORE HOLDAR

[13 W. R., Cr., 36

Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Code of Criminal Procedure. QUEEN *v.* SHAM KISHORE HOLDAR . . . . . 13 W. R., Cr., 36

75. ———— *Criminal Procedure Code, 1861, s. 372—Recalling witness for prosecution.*—Under s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. QUEEN *v.* ASSANOOLLAH

[13 W. R., Cr., 15

76. ———— Witnesses for defence— *Criminal Procedure Code, 1861, s. 372—Duty of Court as to witnesses for defence.*—Under s. 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. QUEEN *v.* MOOKUN

[13 W. R., Cr., 22

77. ———— *Omission to examine witnesses for accused.*—The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked. BHUGWAN *v.* DOYAL GOPE

[10 W. R., Cr., 7

78. ———— *Criminal Procedure Code (Act XXV of 1861), s. 266—Witnesses attending voluntarily.*—In cases coming under Ch. XXV of Act XXV of 1861, to which s. 266 applied, and not s. 252, the Magistrate was not obliged to call on the accused to produce his witnesses, but he was bound to hear them if they attended voluntarily, as by s. 266, read with s. 262, they were supposed to do. IN RE BHIKA ROY

[7 B. L. R., 568 note

S. C. BHIKHA ROY *v.* DHOTUN ROY

[10 W. R., Cr., 36

79. ———— *Obligation of* [illegible]

QUEEN *v.* AMEER CHAND NOHATTA

[13 W. R., Cr., 63

80. ———— *Refusal of Court* [illegible] *—Illegal* [illegible]

Code, to allow the examination of a witness who had been tendered on behalf of the accused. QUEEN *v.* MAHIMA CHANDRA CHUCKERBUTTY

[4 B. L. R., Ap., 77: 12 W. R., Cr., 77

81. ———— *Criminal Procedure Code (1882), ss. 210 and 212—Sessions case —Defence reserved—Power of Magistrate to examine witnesses named for the defence.*—The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence, does not preclude the Magistrate from acting under s. 212 of the Code of Criminal Procedure, and examining any witnesses named by the accused as witnesses whom he intended to call in the Sessions Court. IN THE MATTER OF THE PETITION OF RUDRA SINGH

[I. L. R., 18 All., 380

82. ———— *Criminal Procedure Code (1882), ss. 202 and 540—Summons case.* —Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, [illegible] witness called

Procedure Code in receiving fresh evidence after evidence on both sides had been taken, and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH . . I. L. R., 24 Calc., 167

83. ———— *Witnesses under examination—Threatening of witnesses by Court.*— It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. QUEEN-EMPRESS *v.* HARGOBIND SINGH [I. L. R., 14 All., 242

84. ——— Recording evidence of witness—*Obligation to record evidence of witnesses.*—If a person is before the Court as a witness, his evidence must be recorded as the law directs, if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement QUEEN *v.* PHOOLCHAND *alias* PHOLEEL AHIR . . . 8 W. R., Cr., 11

85 ——— *Note of deposition—Criminal Procedure Code, 1861, s. 195.*—A separate a note of each witness's deposition was required to be taken by s 195 of the Code of Criminal Procedure, 1861, which was not satisfied by a statement that a witness "deposes as last witness." REG. *v.* BYHA VALAD SUBJIM . . 1 Bom., 91

86. ——— Mode of examination—*Examination in absence of accused.*—It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused BIHOORAM *v.* ALLAHO KOLITA . . 1 B. L. R., S. N., 8

QUEEN *v* RAMNATH . . 7 W. R., Cr., 45

87. ——— *Examination in absence of accused*—Where witnesses are not examined in the presence of the accused, the conviction will be quashed. QUEEN *v.* LALLA CHOWDREY [2 N. W., 49

QUEEN *v.* RAMNATH . . 7 W. R., Cr., 45

ANONYMOUS . . . 3 Mad., Ap., 34

QUEEN *v.* RAJCOOMAR SINGH 8 W. R., Cr., 17

QUEEN *v.* RAMDHUN SINGH . 11 W. R., Cr., 22

QUEEN *v.* RAM DASS BOISTUB [11 W. R., Cr., 35

QUEEN *v.* RUSSICK DOSS . 24 W. R., Cr., 76

ALI MEAH *v.* MAGISTRATE OF CHITTAGONG [25 W. R., Cr., 14

88. ——— *Evidence not taken in presence of accused—Criminal Procedure Code, 1861, s. 194.*—When the accused has been arrested, the evidence of a witness for the prosecution ought, under s. 194 of the Code of Criminal Procedure, to be taken in the presence of the accused. QUEEN *v.* HOSSAIN ALI CHOWDHRY [8 W. R., Cr., 74

89. ——— *Criminal Procedure Code, 1872, s 327—Evidence taken in absence of accused.*—Under s. 327, Criminal Procedure Code, 1872, the witnesses for the prosecution should be examined in the presence of the accused when practicable, notwithstanding that their statements have been previously recorded in his absence QUEEN *v.* BOCHA CHOWKEEDAR . 22 W. R., Cr., 33

90. ——— *Evidence taken in absence of accused—Warrant cases*—It is not irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain

QUEEN *v* KASSY SINGH. QUEEN *v* HULKOREE SINGH . . . . 21 W. R., Cr., 61

91. ——— *Depositions taken in absence of accused—Criminal Procedure Code, 1872, s. 327.*—S. 327 of the Criminal Procedure Code, 1872, which permitted the depositions of a witness to be taken in the absence of an accused

absconded, and after due pursuit could not be arrested. QUEEN *v.* ETWAREE DHARFE [21 W. R., Cr., 12

92. ——— *Duty of committing Magistrate—Examination on oath in absence of accused—Statements of witnesses.*—The Magistrate to whom a complaint was made examined certain persons on oath in the absence of the accused, merely for the purpose of ascertaining

MATTER OF THE PETITION OF ASGUR HOSSEIN. EMPRESS *v.* ASGUR HOSSEIN [I. L. R., 6 Calc., 774

S. C. IN RE ASGUR HOSSEIN . 8 C. L. R., 124

93. ——— *Examination of, in absence of accused—Criminal Procedure Code, 1872, s. 327—Power to quash commitment.*—An accused who was charged with murder not being found, the witnesses were examined under s. 327 of Act X of 1872 in his absence. The accused was

Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under s 264 of the Criminal Procedure Code, and then under s. 351 summon such witnesses as he may deem material. *Semble*—The mere absence of questions in the record

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

of a prisoner's statement does not render it inadmissible. EMPRESS *v.* SAGAMBUR [12 C. L. R., 120

94. ———————— *Reading deposition of witness.*—In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before. To read to a witness his deposition on a former trial is not an examination of the witness in the presence of the accused. QUEEN *v.* KRAMUT W. R., 1864, Cr., 1

QUEEN *v.* AFFAZUDDEEN . W. R., 1864, Cr., 13

QUEEN *v.* KANYE SHEIKH [W. R., 1864, Cr., 38

QUEEN *v.* KALUNDAR DOSS . 2 N. W., 100

See also QUEEN *v.* MOHUN BANFOR [22 W. R., Cr., 38

95. ———————— *Reading depositions instead of examining witnesses de novo.*—The High Court refused to interfere when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo.* PURMESSUR SINGH *v.* SORDOP AUDHI KAREE . . . 13 W. R., Cr., 40

96. ———————— *Criminal Procedure Code, 1882, s. 288—Trial before Court of Session—Evidence given before committing Magistrate used at trial to contradict witnesses.*—S. 288 of the Criminal Procedure Code was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before the Court itself. *Queen v. Amanulla, 12 B. L. R., Ap., 15,* referred to. A Judge is bound to put to the [illegible]

[illegible]

them an opportunity of explaining their meaning, or [illegible]

[illegible]

SAHAI . . . I. L. R., 7 All., 862

97. ———— Witness offering hearsay evidence—*Duty of Court.*—The moment a witness commences giving evidence which is inadmissible,—*e.g.*, hearsay evidence,—he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. QUEEN *v.* PITTAMBUR SIRDAR . . 7 W. R., Cr., 25

QUEEN *v.* KALI CHURN GANGOOLY [7 W. R., Cr., 2

98. ———— Refreshing memory of witness—*Ground for inspecting document to refresh memory of witness—Right to inspect document* [illegible]

[illegible]

as to the whole of the facts; (ii) to check the use of improper documents; (iii) to compare his oral testimony with his written statement. *Per* FIELD, J.—The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to [illegible]

[illegible]

PETITION OF JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON . . . I. L. R., 8 Calc., 739

S. C. JHUBBOO MAHTON *v.* EMPRESS [12 C. L. R., 233

99. ———————— *Memorandum made by police officer—Criminal Procedure Code, 1872, s. 119.*—In giving evidence a police officer may refresh his memory by referring to documents in which he has, under s. 119 of Act X of 1872, reduced into writing statements of persons examined [illegible]

[illegible]

previous statements of the witnesses. ROGHUNI SINGH *v.* EMPRESS [I. L. R., 9 Calc., 455; 11 C. L. R., 589

100. ———————— *Memorandum made by police officer—Criminal Procedure Code* [illegible]

[illegible]

KALI CHURN CHUNARI. EMPRESS *v.* KALI CHURN CHUNARI . . . I. L. R., 8 Calc., 154

S. C. IN THE MATTER OF KALI CHURN CHUNARI [10 C. L. R., 51

101. ———————— *Medical witness. Evidence of—Experts—Examination of medical witness examined before Magistrate—Criminal Procedure Code, 1872, s. 323.*—The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

to ask the witness's opinion on those facts. S. 323 of Act X of 1872 did not in any way preclude the Judge at a Sessions trial from calling and examining the medical witness who had been examined before the Magistrate, and in every case in which the deposition taken by the Magistrate is essentially deficient or requires further elucidation, such witness should be called and examined by the Sessions Judge. A medical man in giving evidence may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom ROGHUNI SINGH *v.* EMPRESS

[I. L. R., 9 Calc., 455: 11 C. L. R., 569

102. ——— **Treatment by Court of witnesses for defence.**—When a prisoner makes a distinct defence, and calls witnesses to prove it, in-

or any part of it. QUEEN *v.* BHOONEE PUTWA

[11 W. R., Cr., 9

(*b*) EXAMINATION BY COURT.

103. ——— **Examination of witness by Judge**

and opposed to the provisions of s. 138 of the Evidence Act. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s 138 of the Act. NOOR BUX KAZI *v.* EMPRESS

[I. L. R., 6 Calc., 279: 7 C. L. R., 335

(*c*) CROSS-EXAMINATION.

104. ——— **Duty of Court as to allowing cross-examination**—*Cross-examination of witnesses by accused.*—The Judge ought, if re-

prosecutor at the trial. His refusal to do so is, however, not an error in law. REG. *v.* FATECHAND VASTACHAND . . . 5 Bom., Cr., 85

105. ——— *Right of accused to cross-examine witnesses for the prosecution before commitment—Criminal Procedure Code (1861), s. 194; (Act X of 1872), s. 191; (Act X of 1882), ss. 210, 256, 257, and 288.*—An accused person has the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate previous to commitment. The fact that the Criminal Procedure Code of 1872 contained an express provision to that effect, which was omitted in the Code of 1882, together with the provision of ss 210 and 256 of the latter Code, must not be taken to show an intention on the part of the Legislature to deprive an accused of that right The express provision in the Code of 1872 was probably thought by the Legislature, when framing the Code of 1882, as being redundant, seeing that the Evidence Act of 1872, which was passed at the same time as the Criminal Procedure Code of 1872, made sufficient provision on the subject S. 256, moreover, does not prohibit cross-examination before a charge is framed; it

v. SAGAL SAMBA SAJAO I. L. R., 21 Calc., 642

106. ——— *Further cross-examination by accused—Criminal Procedure Code, 1882, ss 256, 257.*—*D* was put upon his trial for having caused grievous hurt to *M.* The Magistrate, after hearing the evidence for the prosecution, framed

them, and, upon the accused declining to examine

witnesses for the prosecution under s 257 of the

107. ——— **Right to cross-examine**—*Right of accused to cross-examine witnesses.*—The right of an accused party to cross examine witnesses is limited to a right to cross examine the witnesses

WITNESS—CRIMINAL CASES —continued.

5 EXAMINATION OF WITNESSES—continued.

witness QUEEN v. SURROOPCHUNDER PAUL [12 W. R., Cr., 75

108. ——— *Evidence Act, s. 165—Witness called by the Court.*—Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination in order

allowed to cross-examine. EMPRESS v. GRISH CHUNDER TALUKHDAR [I. L. R., 5 Calc., 614: 5 C. L. R., 364

109. ——— *Witness called by Court—Tendering witnesses for cross-examination—Criminal Procedure Code (Act X of 1882), s. 540.*—In a trial before the Sessions Court the

[I. L. R., 14 Calc., 245

110. ——— *Cross-examination of witness called by the Court—Evidence Act (I of 1872), s. 165—Criminal Procedure Code (1882), s. 540.*—Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness,—*Held* that the Magistrate was wrong in not allowing the complainant's attorney to cross-

[I. L. R., 24 Calc., 288

111. ——— *Hostile witness—Evidence Act, s. 154.*—The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRKAR v. QUEEN-EMPRESS . . I. L. R., 13 Calc., 53

112. ——— *Medical witness.*—As to cross-examination by accused of medical witness called in a professional capacity, *see* QUEEN v. JADUN DUTT [6 B. L. R., Ap., 88: 15 W. R., Cr., 34

WITNESS—CRIMINAL CASES —continued.

5. EXAMINATION OF WITNESSES—continued.

113. ——— *Evidence Act (II of 1855), s. 34—*

statements

pleader was

Magistrate

defence on

statements

might do so as regards previous statements which were reduced to writing, without showing the writing. S. 34, Act II of 1855, explained TOKHEYA RAI v. TUPSEE KOER . . . 15 W. R., Cr., 23

114. ——— *Evidence Act, 1855, s. 23—Cross-examination on previous statements reduced to writing.*—A witness, when under examination-in-chief before the Court of Session, should not have his attention directed to his deposition before the Magistrate. He might, under s. 23, Act II of 1855, be cross-examined as to previous statements made by him in writing, when his

115. ——— *Prosecution witness examined before the Magistrate but not called in the Court of Session—Witness called by*

witness was

counsel for

the defence

examination

what he ha

Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court, if the witness proved himself a hostile witness. QUEEN-EMPRESS v. ZAWAR HUSEN I. L. R., 20 All., 155

116. ——— Right of witness on cross-examination—*Right to qualify statements.*—A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief. QUEEN v. TULSI DOSADH . . . . . 18 W. R., Cr., 57

117. ——— Right to recall witnesses for cross-examination—*Cross-examination of, by accused—Witnesses for defence—Record of evidence.*—The charge having been read to the accused person, he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence who were not in attendance. The Magistrate

WITNESS—CRIMINAL CASES —*continued*

5. EXAMINATION OF WITNESSES—*continued.*

cross-examined by the accused on the date fixed for the examination of the witnesses for the defence.

118. ———— Cross-examination after reading depositions—*Irregularity in examination—Criminal Procedure Code, ss. 286, 258.*—At a trial before a Sessions Court, the attorney who

119. ———— Cross-examination of witness after his examination by the Court—*Evidence Act (I of 1872), s. 155* —The principle that parties cannot, without the leave of the Court, cross-examine a witness whom, the parties having already examined or declined to examine, the Court itself has examined, applies equally whether it is intended to direct the cross-examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends (or is designed) to get rid of the effect of each and every answer, just as much as one that may bring out an inconsistency or contradiction, *s. 155 of Act I of 1872.* REG. *v.* SAKHARAM MUKUNDJI . . . 11 Bom., 166

120. ———— Recalling witnesses for cross-examination—*Refusal to recall witness*—

THE PETITION OF BELILIOS. BELILIOS *v.* QUEEN [19 W. R., Cr., 53

121. ———— *Criminal Procedure Code, 1861, s. 252.*—A Magistrate could not

MATTER OF THAKOOR DYAL SEN [17 W. R., Cr., 51

IN THE MATTER OF THE PETITION OF NOBIN CHAND BANERJEE . . . 25 W. R., Cr., 32

WITNESS—CRIMINAL CASES —*continued*

5. EXAMINATION OF WITNESSES—*continued.*

122. ———— *Warrant cases—Criminal Procedure Code, 1872, Ch. XVII*—In the trial of warrant cases the accused may, after

123. ———— *Right of accused to cross-examine witness—Criminal Procedure Code, 1872, s. 218*—An accused person had, under

re-summoned. QUEEN *v.* LALL SINGH [6 N. W., 270

124. ———— *Criminal Procedure Code, 1872, s. 218—Recall of witnesses for prosecution.*—Under s. 218 of the Code of Criminal

125. ———— *Cross examination—Recalling witnesses for further cross-examination after charge—Criminal Procedure Code (Act X of 1882), s. 257.*—There is, under

nesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day

frustrated in consequence of the refusal to recall

in a needlessly carping and litigious spirit, losing

WITNESS—CRIMINAL CASES *—continued.*

5. EXAMINATION OF WITNESSES—*continued.*

sight of the main purpose of those proceedings and giving over-attention to matter of mere form. NILKANTA SINGH *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 469

126. ———— *Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of 1872), s. 137.*—One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. RAM CHAND CHATTERJEE *v.* HANIF SHEIKH I. L. R., 21 Calc., 401

127. ———— *Cross-examination of prosecution witnesses before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purposes of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), ss. 254, 256, and 257—Penal Code (Act XLV of 1860), s. 342.*—After

to state whether he wishes to cross-examine, and, if

[I. L. R., 27 Calc., 510
4 C. W. N., 469

128. ———— *Summoning witnesses for prosecution for further cross-examination—Refusal of such application for inadequate reason—Criminal Procedure Code, 1898, s. 257.*—The mere fact that the witnesses for the prosecution had already been cross-examined is not a sufficient reason for refusing to re-summon them, unless the Magistrate expressly records his opinion that the application for the second cross-examination is within the terms of s. 257 of the Criminal Procedure Code for the purpose of vexation or delay or for defeating the ends of justice. An order refusing to re-summon witnesses without assigning any such reasons is not a proper order. When an application to re-summon witnesses for the prosecution was

129. ———— *Criminal Procedure Code (Act V of 1898), ss. 256, 257—Cross-examination of witness for prosecution, Right of.*—

When after the charge was drawn the accused

130. ———— *Cross-examination previous to framing of charge—Criminal Procedure Code, 1872, s. 218.*—An accused person was held to be not deprived of the right given him by s. 218, Act X of 1872, to recall and cross-examine the witnesses for the prosecution after the charge had

section, and there was no sufficient proof that the accused consented to the discharge of the witnesses for the prosecution, it was held that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing re-summoned. *Quære*—If the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses. QUEEN *v.* LALL MAHOMED 6 N. W., 284

131. ———— *Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.*—An accused should be allowed at preliminary inquiries before a Magistrate to cross-examine the witnesses; but ... shall be examined upon ... is left ... such ... Magis- ... ution ... minal ... charge against the prisoner. QUEEN *v.* BHARA BUXKUR BISWAS . 10 W. R., Cr., 25

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*concluded.*

132. ——— *Right of accused to recall witnesses for prosecution—Criminal Procedure Code (Act X of 1872), ss. 217, 218.*—Reading ss 217 and 218 of the Criminal Procedure [illegible]

[illegible]

S. C. IN THE MATTER OF FAIZ ALI [8 C. L. R., 325

133. ——— *Cross-examination of witnesses for the prosecution.*—As a rule, the proper and convenient time for the purpose of cross examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross-examine the witnesses for the prosecution at any period of the defence when the Court may think such a step right and proper. KHURRUCKDHAREE SINGH v. PERSHADEE MUNDUL . . 22 W. R., Cr., 44

134. ——— *Refusal to allow accused to recall witnesses for prosecution—Waiver of right by accused*—Where certain accused persons, [illegible]

after the framing of the charge.—*Held* that accused persons always had a right to recall prosecution witnesses, which ceased only when they themselves waived it; that Magistrates could waive all inconvenience to witnesses by asking accused persons, on the drawing up of charges, whether they required [illegible]

[illegible]

6. CONSIDERATION AND WEIGHT OF EVIDENCE.

135. ——— Weight of evidence—*Single witness—Evidence of fact*—The evidence of one witness, if reliable, is sufficient to prove a fact. ZALEM MISSER v. KUNDUN KOOER [11 W. R., 194

BALINDUR NARAIN v. KALLA MEESCO KOOE [18 W. R., 341

PROSONNO NARAIN DEB v. ROMONEE DOSSEE [10 W. R., 236

136. ——— Discrepancies in evidence of witnesses—*Effect of discrepancies.*—Discrepancies in the evidence of witnesses are not the less destructive of their testimony because a greater sagacity on the part of the witnesses would have avoided them REG. v. KALU PATIL . 11 Bom., Cr., 146

WITNESS—CRIMINAL CASES —*concluded.*

6. CONSIDERATION AND WEIGHT OF EVIDENCE—*concluded.*

137. ——— Consideration of evidence —*Assumption of bad character of prisoner.*—A Judge cannot [illegible] with an [illegible] the prisoner [illegible]

[illegible]

138. ——— Value of evidence—*Value* [illegible]

not be true. *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. QUEEN v. AHMED ALLY [11 W. R., Cr., 25

139. ——— *Evidence disbelieved in some parts and accepted in others.*—Where the evidence at a trial is in part disbelieved, as to which part it is thought that the witnesses had committed perjury, it is unsafe to accept the evidence of those witnesses in other parts and to convict the prisoner thereon JASPATH SINGH v. QUEEN-EMPRESS . I. L. R., 14 Calc., 164

WORKING FOR GAIN.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

WORKMAN.

See ACT XIII OF 1859.
[3 B. L. R., A. Cr., 32
I. L. R., 7 Mad., 100
I. L. R., 7 Bom., 379
I. L. R., 10 Bom., 96

WRITTEN STATEMENT.

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS
[B. L. R., Sup. Vol., 904
1 B. L. R., A. C., 133
9 W. R., 83, 130, 290
16 W. R., 257
23 W. R., 220
I. L. R., 14 Bom., 516

See SET-OFF—GENERAL CASES.
[14 W. R., 473
I. L. R., 15 Mad., 22

——— Denial of title in—

See FALSE EVIDENCE—GENERAL CASES.
[I. L. R., 6 All., 626

WRITTEN STATEMENT—*continued.*

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE.
[I. L. R., 13 Calc., 96
I. L. R., 15 Mad., 123

1. ——— **Form and contents of written statement**—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh* v *Shamachurn Bhutto, 11 Moore's I. A., 7 ; Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moore's I. A., 468*, and *Narainee Dossee* v. *Nurrohurry Mohuto, Marsh., 70,* that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. CHOVA KARA *v.* ISA BIN KHALIFA
[I. L. R., 1 Bom., 209

2. ——— *Argumentative statement.*—A written statement should not be argumentative. BISHEN SAHAYE SINGH *v.* BEER KISHORE SINGH . . . . . 8 W. R., 296

3. ——— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 121.*—An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. HALFORD *v.* EAST INDIAN RAILWAY COMPANY
[12 B. L. R., Ap., 19

4. ——— *Irrelevant matter —Application to take written statement off the file.*—Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week Written statements should set out the *bonâ fide* nature of the defence, and nothing else. KASUBLAL DEY *v.* TREMEARNE
[3 B. L. R., Ap., 12

5. ——— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.*—The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced

WRITTEN STATEMENT—*continued.*

[illegible]

6. ——— *Inconsistent pleas —Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the [illegible] dispositions. The defendants who claimed under a [illegible] that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan* v. *Hoseini Bibi, I. L. R., 15 Calc., 684 : L. R., 15 I. A., 81,* distinguished. NARAYANASAMI *v.* RAMASAMI
[I. L. R., 14 Mad., 172

7. ——— **Court-fee on written statement**—*Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time [illegible]
CHERAG ALI *v.* KADIR MAHOMED
[12 C. L. R., 387

8. ——— **Verification of written statement**—*Admission on record without verification*— [illegible] & Co. [illegible]

9. ——— *Verification on behalf of Corporation—Principal officer of Corpo-* [illegible] written statement on behalf of a Corpora[illegible] Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—*continued.*

that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written state-

admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, their observance might be waived by the plaintiffs, and if they were prepared to waive objections to the sufficiency of the verification, further evidence of the nature indicated might be dispensed with SREENATH BANERJEE *v* EAST INDIAN RAILWAY CO.

[I. L. R., 22 Calc., 268

10. ———— *Application to verify—Notice—Practice.*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. FINLAY, CAMPBELL & CO. *v.* STEELE

[1 Ind. Jur., N. S., 39

11. ———— *Application to verify by agent—Notice.*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side OVEREND, GURNEY & CO. *v.* STEELE

[1 Ind. Jur., N. S, 40

thereto. JADUB RAM DEB *alias* JADUB CHUNDER DEB *v.* RAM LOCHUN MUDUCK . 5 W. R., 56

13. ———— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss. 28, 123.*—The

neglected to file one himself. DENOMOYE DOSSEE *v.* TARRACHURN COONDOO CHOWDHRY

[Bourke, O. C., 153

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WRITTEN STATEMENT—*continued.*

Court, was held to be contrary to the provisions of ss. 120 and 122 of the Civil Procedure Code, 1859. ALI NUKEE *alias* EMDAD ALI *v.* TORAB ALI *alias* MIRZA NAWAB . . . W. R., 1864, 44

15. ———— Written statement by third party—*Power of Court.*—A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. SURNOMOYEE *v.* BYKUNT CHUNDER MUSTOFEE . . . . 25 W. R., 17

16 ———— Defendant neglecting to put

expense of the defaulting party. RAMRUTTON *v.* ORIENTAL INLAND STEAM NAVIGATION COMPANY

[2 Hyde, 89

17. ———— Additional written statement—*Practice—Act VIII of 1859, s. 122.*—An

DASMANI DASI *v.* SRINATH GHOSE

[3 B. L. R., Ap., 11

18. ———— *Supplemental statements, Filing of.*—Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. MUNCHERSHAW BEZONJI *v.* NEW DHURUMSEY SPINNING & WEAVING COMPANY . . . I. L. R., 4 Bom., 576

19. ———— *Civil Procedure Code, 1859, s. 122.*—A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under s. 122, Civil Procedure Code, 1859, which did not add to or vary the plaintiff's claim. JAHANGEER BUKSH *v.* BHICKAREE LALL . . . . 11 W. R., 71

20. ———— *Statement explaining plaint.*—A written statement which was in

RAM . . . I. L. R., 24 Bom., 403

WRITTEN STATEMENT—*concluded.*

22. ———— Objections to written statement—*Sunday—"Four clear days"—Civil Procedure Code, 1859, s 124*—A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s 124 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. SMALLWOOD *v.* PARRY . . . . . Cor., 39

23. ———— Raising question not raised in written statement—*Omission to raise equitable defence in written statement*—A defendant is not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement. GOUR CHUNDER BISWAS *v.* GREESH CHUNDER BISWAS [7 W. R., 120

24. ———— *Raising question of jurisdiction—Fresh issue—Practice.*—Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited [illegible]

v. PALMER . . . . . Cor., 8

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS

See LIMITATION ACT, 1877, ART. 109 [I. L. R., 24 Calc., 413

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES [I. L. R., 14 Bom., 408

WRONGFUL ATTACHMENT.

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT [I. L R., 17 Calc., 438 L. R., 17 I A., 17

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS [3 B. L. R, A. C., 413 I. L. R., 3 Bom., 74 7 Mad., 235

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS

See CASES UNDER EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE. [I. L. R., 21 Calc., 103

See UNLAWFUL COMPULSION. [I. L. R., 19 Calc, 572

See WRONGFUL RESTRAINT. [I. L R., 12 Bom., 377

WRONGFUL CONFINEMENT—*continued.*

1. ———— What amounts to imprisonment—*Suit for damages.*—The detaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will. PARAN KUSAM NARASAYA PANTULU *v.* STUART . . 2 Mad., 396

2. ———— Nature of confinement—*Penal Code (Act XLV of 1860), s. 346.*—In order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered IN THE MATTER OF THE PETITION OF SREENATH BANERJEE. EMPRESS *v.* SREENATH BANERJEE [I. L. R., 9 Calc., 221

3. ———— Unlawful commitment by person in authority—*Illegal arrest—Penal Code, s. 220—Presumption of malice.*—Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code. REG. *v.* NARAYAN BABAJI . . 9 Bom., 346

4. ———— Obtaining arrest of wrong person—*Liability of person setting Court in motion*—Where a wrong person is arrested and imprisoned under a decree to which he is no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly. BHEEMA CHARLU *v.* DONTI MORTI . . . . 8 Mad., 38

5. ———— Illegal arrest—*Malice*—Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction ANONYMOUS . . . 5 Mad., Ap., 24

6. ———— Wrongful restraint—*Penal Code, ss. 339, 340, 342—Malice.*—Malice is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Indian Penal Code (Act XLV of 1860). The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed The accused as abkari inspector visited a toddy shop where the complainant and one *D* were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an [illegible]

WRONGFUL CONFINEMENT—*continued.*

[illegible]

allowed to go away. The accused prosecuted *D*, and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of *D's* trial, the complainant charged the accused with wrongful confinement under s. 342 of the Indian Penal Code. The accused pleaded that the complainant had volun-

[illegible]

stance that the accused had acted without malice and to the best of his judgment did not protect him, if his act otherwise satisfied the definition of s. 340 of the Indian Penal Code DHANIA *v.* CLIFFORD

[I. L. R., 13 Bom., 376

7.———— Wrongful arrest—*Penal Code (Act XLV of 1860), s. 342—Criminal Procedure Code (1882), s. 54—Offence committed by a British*

[illegible]

charge of criminal breach of trust or other cognizable offence committed outside British India. *M* was a

[illegible]

Thereupon he obtained an order from the District Magistrate of Belgaum, dated the 15th November 1891, which exempted him from arrest for the offence

[illegible]

Magistrate's order of the 15th November 1891, but he was detained in custody till the matter was reported

[illegible]

stable on a charge of wrongful arrest and wrongful confinement. *Held* that the chief constable had no power to arrest the complainant without a warrant,

WRONGFUL CONFINEMENT—*concluded.*

and that he was guilty of the offence of wrongful confinement under s. 342 of the Penal Code. IN RE MUKUND BABU VETHE . I. L. R., 19 Bom., 72

WRONGFUL CONVERSION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

[I. L. R., 4 Calc., 116
5 Bom., O. C., 140
I. L. R., 10 All., 133

See ONUS OF PROOF—WRONGFUL CONVERSION . . . 7 W. R., 286

See PLEDGOR AND PLEDGEE.

[I. L. R., 19 Calc., 322
L. R., 19 I. A., 60

WRONGFUL DETENTION.

———— Detention of accused by Police Inspector—*Criminal Procedure Code, 1872 s. 124.* —*Per* GLOVER, *J.*—Where a Sub-Inspector of Police is charged with having detained prisoners for more than twenty-four hours, it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as s. 124, Act X of 1872, imperatively lays

[illegible]

[19 W. R., Cr., 38

WRONGFUL DISMISSAL.

See CASES UNDER MASTER AND SERVANT.

———— Suit for, against Government.

See GOVERNMENT 7 B. L. R., [illegible]

WRONGFUL DISTRAINT.

See BENGAL RENT ACT (VIII OF 1869, [illegible]

[3 B. L. R., [illegible]
6 W. R., [illegible]
[illegible]
3 B. L. R., [illegible]
7 W. R., 41

See BENGAL RENT ACT [illegible]
[illegible], 470
[illegible]

See JURISDICTION [illegible] AND REVENUE [illegible]

See MADRAS RENT [illegible]

See PRIVATE [illegible]

See RIOTING [illegible]

See TRESPASS [illegible]

WRONGFUL DISTRAINT—*continued.*

1.———— **Cutting and carrying away crops**—*Persons put in possession in execution of decree*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had culti-

...eld that
law of
damages
MONEE

DABEE . . . . . . 10 W. R., 70

2 ———— **Crops, Seizure of**—*Act X of 1859, ss. 142 and 143—Trespass*—Certain sub-lessees sued in the Collector's Court the zamindar and others employed by him for the value of crops seized and

person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons were considered by that section as trespassers, and were liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. RADHA MOHAN NASKAR *v.* JADUNATH DASS

[3 B. L. R., A. C., 261 : 12 W. R., 68

such a case he was a mere trespasser. ROWSHUN *v.* BHOLANATH DOSS . 5 W. R., Act X, 67

4. ———— **Suit for damages for illegal distraint**—*Tort—Non-joinder of parties—Parties in actions of tort.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained.

joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit. JAGDEO SINGH *v.* PADARATH AHIR . . . . I. L. R., 25 Calc, 285

5. ———— **Persons removing property under rent law**—*Procedure—Penal Code, s. 379.*—Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. IN THE MATTER OF AGHANI. AGHANI *v.* BHAGI HALWAI . 8 C. L. R., 204

WRONGFUL DISTRAINT—*concluded.*

6. ———— **Right to sue to set aside wrongful distraint**—*Right of landlord against trespasser.*—A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BERAH

[I. L. R., 4 Calc., 890 : 4 C. L. R., 32

7. ———— **Right to damages for wrongful distraint**—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.*—When, on the

property. TARINEE KANT LAHIREE CHOWDHRY *v.* RAJKISHORE TONTRY . . 24 W. R., 334

8. ———— **Right to damages**—*Act X of 1859, s. 142—Suit to contest distraint—Onus of proof—Damages.*—In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma; if

v. PRANNATH MUNDUL . . 8 W. R., 220

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for wrongfu

—In order to

1859, it was

the defendant in making the distress was acting only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. RAYE KUMUL DOSSEE *v.* JHOROO MOLLAH . . . 15 W. R., 543

See JOYLOLL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . . . . 9 W. R., 162

10. ———— **Suit on account of property damaged by wrongful distrainer**—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. NONKOO RAM *v.* WOOJOGUR ROY . 5 W. R., Act X, 68

11. ———— **Procedure**—*Beng Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREM CHAND LAHA *v.* ADDOITO DOSS . . 20 W. R., 445

WRONGFUL GAIN OR LOSS.

See THEFT . I. L. R., 15 Bom., 344
[I. L. R., 18 All, 88
I. L. R, 22 Calc, 669, 1017
I. L. R., 25 Calc., 416

WRONGFUL LOSS.

See MISCHIEF . 3 B. L. R., A. Cr., 17
[I. L. R., 3 Calc., 573
I. L. R, 12 Calc., 55, 660
I. L. R., 7 Bom., 126

WRONGFUL POSSESSION.

——— Trespasser—*Sums paid during wrongful possession, Right to recover.*—Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has, during his possession, paid certain sums for Government revenue on the supposition that he was the lawful owner (being, however, in reality, nothing more than a trespasser and wrong-doer), he is not entitled

[I. L. R, 4 Calc., 566: 3 C. L. R, 456

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE.
[I. L. R., 21 Calc., 103

See MISCHIEF . I. L. R., 12 Calc., 55

See WRONGFUL CONFINEMENT.
[I. L. R., 13 Bom., 376

1. ——— Penal Code, ss. 339, 340, 342 —*Police officer, Conduct of.*—In a case of a police officer charged under Penal Code, s. 342, where there was no malice, no intention of doing an act of the nature spoken of in s 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police officer, the facts were held not to amount to the criminal offence of wrongful restraint. IN THE MATTER OF THE PETITION OF BUDROOL HOSSEIN . . 24 W. R., Cr., 51

2. ——— s. 339—*Refusal to let person go until he gave bail.*—Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code. SHEO SHURN SAHAI *v.* MAHOMED FAZIL KHAN
[10 W. R., Cr., 20

3. ——— *Police keeping witness in custody under surveillance.*—Where the police kept a witness under surveillance for four days, the High Court held, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint. BAJRANGI LALL *v.* EMPRESS . . . . 4 C. W. N., 49

WRONGFUL RESTRAINT—*continued.*

4. ——— *Restraint and taking money on false plea.*—Where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea,—*Held* the accused were guilty of wrongful restraint, and not theft JOWAHIR SHAH *v.* GRIDHAREE CHOWDHRY
[10 W. R, Cr, 35

5. ——— Penal Code, ss. 79 and 341—

under s 341 was not right. KANAI LAL GOWALA *v.* QUEEN-EMPRESS . I. L. R., 24 Calc., 835

KANHAI GOALA *v.* QUEEN-EMPRESS
[1 C. W. N., 665

6. ——— Penal Code, ss. 52, 79, 99,

cution of duty—Arrest—Criminal Procedure Code (Act X of 1882), s. 54.—On the 29th Decem-

that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks and

Inspector, seeing that the complainant was an old man, and on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342, respectively, of the Indian Penal Code (XLV of 1860). The defence was that the complainant had assaulted the accused,

WRONGFUL RESTRAINT—*concluded.*

and had been on that account arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused *professed to*

Magistrate convicted the accused of wrongful confinement under s. 342 of the Indian Penal Code (Act XLV of 1860), and sentenced him to four months' rigorous imprisonment. *Held* by the High Court

that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property,—still the complainant had no right of

He was therefore legally arrested,

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244 (ACT XXIII OF 1861, s. 11)—QUESTIONS IN EXECUTION OF DECREE.
[3 N. W., 187
2 Agra, 105
5 Mad., 185
12 B. L. R., 201, 203 note, 207 note, 208 note
12 W. R., 85
3 B. L. R., A. C., 413
I. L. R., 22 Calc., 483

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS . Marsh., 495
[3 Agra, 202
3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

WRONGFUL SEIZURE IN EXECUTION—*concluded.*

See CASES UNDER EXECUTION OF DECREE —LIABILITY FOR WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.
[I. L. R., 19 Bom., 485

See CASES UNDER SALE IN EXECUTION OF DECREE—WRONGFUL SALES.

Y

YEAR.

——— Agricultural—

See N.-W. P. RENT ACT (XVIII OF 1873), s. 94 . I. L. R., 1 All., 512

Z

ZAMINDAR.

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

See GRANT—POWER TO GRANT.
[B. L. R., Sup. Vol., 75, 774

——— Kabuliat between Government and—

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R., 3 Calc., 464

——— Liability of, for repairs of tank.

See CONTRACT ACT, s. 70.
[I. L. R., 18 Mad., 88

——— Proof of title of—

See OWNERSHIP, PRESUMPTION OF.
[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

——— Purchase by, of patni interest, Effect of—

See MERGER . . 3 C. L. R., 159
[I. L. R., 19 Calc., 760

ZAMINDAR, DUTY OF—

——— Ancient tanks—*Negligence—Statutory powers—Liability for damage occasioned by overflow of tanks.*—The public duty of main-

tanks in the maintenance of which large numbers

ZAMINDAR, DUTY OF—*concluded.*

of such zamindars with regard to these tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. A zamindar, if the banks of any such tank in his possession are washed away by an

S. C. in lower Courts. MADRAS RAILWAY COMPANY *v.* ZEMINDAR OF KAVETINUGGUR
[5 Mad., 139

and after remand . . . . 6 Mad., 180

ZAMINDAR, POWER OF—

1. ———— Power to grant lease—*Lease granted for longer term than zamindar's engagement with Government—Operation of Act XVI of 1842.*—A lease granted by a zamindar for a longer period than the term of his own engagement with the Government was not absolutely void for the excess, but only voidable, and might be confirmed *Semble*—That Act XVI of 1812 applied to agricultural leases, not to *boná fide* leases for other purposes NITA RAM *v.* NANUCK DASS
[1 N W., Part III, 47: Ed. 1873, 103

2. ———— *Hindu law—Authority to grant lease as manager and owner*—Under the Hindu law, the granting of a lease, though for a term, is an act within the scope of a zamindar's authority as manager and owner of the zamindari, and is, as such, binding on his successor, unless, in the circumstances in which it was made, it was otherwise than *bona fide.* RAMANADAN *v.* SRINIVASA MURTHI . . . I. L. R., 2 Mad., 80

3. ———— Power to alter boundaries—*Effect of arrangement altering boundary without sanction of Government.*—Zamindars have no authority, without the sanction of Government, to alter the boundaries of their permanently-settled estates, and to transfer villages from one zamindari to another. Such an arrangement is of no binding effect, except between the parties who have made it. RAMCHUNDER BANERJEE *v.* MUDDUNMOHUN TEWAREE
[W. R., 1864, 355

4. ———— Power to charge estate with personal debts.—A decree for possession of certain

NIMAYE CHURN SEIN *v.* RAMMONEE BEEBEE
[10 W. R., 152

ZAMINDAR, RIGHTS OF—

See MADRAS REGULATION XXV OF 1802.
[14 B. L. R., 115
L. R., 1 A., 268, 282

See WASTE LANDS I. L. R., 19 All., 172

1. ———— Nature of zamindari estate—*Power to deal with estate.*—A zamindar's estate is

ZAMINDAR, RIGHTS OF—*continued.*

analogous to an estate tail as it originally stood upon the statute *de donis*? The zamindar is the owner of the zamindari, but can neither encumber nor alienate beyond the period of his own life. * CHINTALAPATI CHINNA SIMHADRIRAJ *v.* ZAMINDAR OF VIZIANAGRAM
[2 Mad., 128

2. ———— Collections of rent—*Claim to intermediate tenures—Onus of proof.*—A zamindar has as such a *primá facie* right to the gross collections from all the mouzahs within his zamindari. It is for parties setting up an intermediate tenure to prove their grant. PRAHLAD SEN *v.* DURGAPRASAD TEWARI
[2 B. L. R., P. C., 111: 12 W. R., P. C., 6
12 Moore's I. A., 286

3. ———— Right to rent—*Payment of revenue by zamindar.*—The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. JOTENDRO MOHUN TAGORE *v.* AYMUN BEEBEE
[1 C. L. R., 366

4. ————Liability for rent—*Co-sharer in talukh.*—*Held* that a zamindar, by becoming a co-sharer in the talukh, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent, he only becomes bound to make an allowance for that portion which he as a co sharer ought to pay. GOBINDO COOMAR CHOWDHRY *v.* MANSON
[15 B. L. R., 56; 23 W. R., 152

5. ———— Compensation—*Compensation to patnidar for loss sustained by erection of works by railway company.*—A zamindar who receives his rents in full is not entitled to participate in compensation received by his patnidar for loss suffered by the latter in consequence of works being erected on land included in the patni. MAHARAJAH OF BURDWAN *v.* WOOMA SOONDUREE DOSSEE
[10 W. R., 12

6. ———— Sale in execution of decree—*Custom—Charge on sale-proceeds.*—Where a sale took place in execution of a decree, and it was proved by custom that the zamindar's right extended to one-fourth of the sale-proceeds in cases of involuntary sale,—*Held* that the zamindar had a right to recover the fourth share of the proceeds of sale from the judgment-creditor, who in truth reserved the sale price. The zamindar's right attached to the sale proceeds, and was a prior charge upon the proceeds. BRIJ NATH PERSHAD *v.* MAHOMED FUZL HOSSEIN
[2 Agra, Part II, 204

7. ———— *Custom—Right to share of sale-proceeds—Calculation of amount—Zamindari haq.*—Where by custom the zamindar is

ZAMINDAR, RIGHTS OF—*concluded.*

dues, to the former, it being incumbent on him to see that the zamindar is satisfied in respect of his dues. *Held* further that, under the circumstances, the plaintiffs, the zamindars, were entitled to one-fourth from R450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. HEERA RAM *v.* DEO NARAIN SINGH . Agra, F. B., 63: Ed. 1874, 48

8. ——— *Sale in execution of house in mohalla—Wajib-ul-urz—Liability of auction-purchaser—Right of zamindar to huq-i-chaharam.*—The zamindars of a certain mohalla claimed from the purchaser of a house situated in such mohalla, which had been sold in execution of a decree, one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the wajib-ul-urz. That document stated, *inter alia*, that, when a house in such mohalla was sold, a cess called chaharam was received by such zamindars "according to the understanding arrived at between the seller and the zamindars" *Held* that such zamindars were not entitled under the terms of the wajib-ul-urz to one-fourth of the sale-proceeds; that the decree-holder, because he happened to have become the auction-purchaser, could not be regarded as the "seller," and it was only the "seller" who was liable; that the terms of the wajib-ul-urz were applicable only to private and voluntary sales, and not to execution-sales; and that, under these circumstances, the suit must be dismissed. BENI MADHO *v.* ZAHURUL HAQ [I. L. R., 3 All., 797

9. ——— Sale of zamindar's right—

KISHORE . . . 2 Agra, Part II, 202

ZAMINDAR AND RAIYAT.

See CASES UNDER BENGAL RENT ACT, 1869.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER MADRAS RENT RECOVERY ACT, 1865.

See CASES UNDER RIGHT OF OCCUPANCY.

ZAMINDARI DAKS.

1. ——— Beng. Act VIII of 1862—*Effect of Act on liability of patnidars.*—Bengal Act VIII of 1862 did not relieve patnidars from their liability under the old laws of paying the zamindari dâk charges. BISSONATH SIRCAR *v.* SHURNOMOYEE [4 W. R., 6

2. ——— *Liability of patnidar.*—Where the terms of a patni lease did not make the patnidar liable for the maintenance of

ZAMINDARI DAKS—*concluded.*

the zamindari dâks, it was held that the patnidar was not liable for a tax which was imposed on the zamindar by Bengal Act VIII of 1862 RAKHAL DOSS MOOKERJEE *v.* SHURNO MOYEE [6 W. R., 100

3. ——— *Liability of patnidar.*—The provision in a pottah that if any item is laid upon the zamindar over and above the sudder jumma, the patnidar shall bear a rateable proportion of it, held not to include the charges connected with the zamindari dâk. ROHINEE KANT ROY *v.* TRIPOORA SOONDUREE DASSIA . 8 W. R., 45

SARODA SOONDURY DEBIA *v.* WOOMA CHURN SIRCAR . . . 3 W. R., S. C. C. Ref., 17

ZAMINDARI DUES AND CESSES.

——— Suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CESS. [I. L. R., 1 All., 444

ZAMORIN OF CALICUT.

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY. [I. L. R., 21 Mad., 105

See PENSIONS ACT, s. 12. [I. L. R., 21 Mad., 105

ZANZIBAR.

See CONSULAR COURT AT ZANZIBAR. [I. L. R., 3 Bom., 58

——— Consular Court at—

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL. [I. L. R., 20 Bom., 480

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 3 Bom., 334

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [I. L. R., 19 Bom., 741

ZUR-I-PESHGI LEASE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R., 18 All., 123

See DECREE—FORM OF DECREE—POSSESSION . I. L. R., 18 All., 440

See LEASE—ZUR-I-PESHGI LEASE.

See MORTGAGE—POSSESSION UNDER MORTGAGE

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION. [I. L. R., 24 Calc., 272
L. R., 23 I. A., 158
1 C. W. N., 23